STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC UTILITY CONTROL
TEN FRANKLIN SQUARE
NEW BRITAIN, CT 06051

DOCKET NO. 08-12-04 **PETITION OF YOUGHIOGHENY COMMUNICATIONS-NORTHEAST, LLC D/B/A POCKET COMMUNICATIONS FOR A DECLARATORY RULING THAT THE SOUTHERN NEW ENGLAND TELEPHONE COMPANY D/B/A AT&T CONNECTICUT IS IN VIOLATION OF SECTION 16-247B OF THE CONNECTICUT GENERAL STATUTES AND THE DEPARTMENT'S ORDERS IN DOCKET NO. 02-01-23 RELATING TO TRANSIT TRAFFIC AND FEDERAL AND STATE LAWS AND REGULATIONS RELATING TO THE TRANSIT TRAFFIC FACTOR**

October 7, 2009

By the following Commissioners:

Anthony J. Palermino
Kevin M. DelGobbo
John W. Betkoski, III

DECISION

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DECISION

I. INTRODUCTION

A. SUMMARY

This petition was brought by Youghiogheny Communications Northeast, LLC d/b/a Pocket Communications (Pocket) regarding the provision of transit service (TTS). In this Decision, the Department of Public Utility Control (Department) affirms its previous determination that it continues to have subject matter over and statutory authority to regulate transit service and the rates charged for the service. The Department further finds that, based on the evidence, there are a limited number of alternative providers of transit service and The Southern New England Telephone Company d/b/a AT&T Connecticut (Telco or AT&T) has a vast ubiquitous network. Therefore, the Department concludes that there has been no demonstration that an effective competitive market exists in Connecticut for transit service.

As a result of the lack of effective competition for transit service, the Department further has determined that the rates for transit service should be TSLRIC plus a reasonable contribution to common cost mark-up of 35%. Accordingly, the Department orders the Telco to, no later than October 7, 2009, reduce its TTS rate to TSLRIC plus 35% mark-up for common costs until the conclusion of the Department's investigation of cost studies in Docket No. 09-04-21, DPUC Investigation Into The Southern New England Telephone Company's Cost of Service re: Reciprocal Compensation. The rate shall be filed with the Department no later than October 14, 2009.

The Department also orders the Telco to develop a billing method that more accurately reflects Pocket's traffic usage. If the Telco can not develop such a method it shall report to the Department whether separate trunk groups could be used for TTS, whether switches could be upgraded or any other method the telco could use to provide an accurate measure of Pocket and other similar carrier's TTS usage. The report shall be filed no later than October 14, 2009.

B. BACKGROUND OF THE PROCEEDING

By petition dated December 2, 2008 (Petition), filed pursuant to §4-176 of the General Statutes of Connecticut (Conn. Gen. Stat.), Pocket requested the Department to issue a declaratory ruling that the Telco was in violation of Conn. Gen. Stat. §16-247b(b) and the Department's orders in its January 15, 2003 Decision in Docket No. 02-01-03, Petition of Cox Connecticut Telcom, L.L.C. for Investigation of the Southern New England Telephone Company's Transit Service Cost Study and Rates, relating to Transit Traffic Service (TTS).[1]

[1] TTS connects the networks of other carriers that are not otherwise directly connected. In this case, AT&T acts as an intermediary by accepting traffic from Pocket's network and delivering the traffic to a third-party carrier's network. TTS is utilized for only certain traffic. The service is limited to calls that originate and terminate within the same Major Trading Area (MTA), commercial mobile radio service (CMRS) provider-bound traffic, Internet Service Provider- (ISP) bound traffic, IntraLATA InterMTA traffic (not applicable in Connecticut) and 800 IntraLATA toll traffic. Petition, p. 3.

C. CONDUCT OF THE PROCEEDING

By Notice of Request for Written Comments dated February 25, 2009, the Department sought written comments from interested persons concerning the Petition. A hearing in this matter was not required and none was held.

By letter dated April 14, 2009, Pocket requested that the Department issue an Interim Decision requiring the Telco to implement an interim rate of $0.001984 for transit traffic, subject to a true-up, and include transit traffic in the cost of service study that is being reviewed in Docket No. 09-04-21. In its May 1, 2009 ruling, the Department denied Pocket's request. Nevertheless, the Department determined that Pocket's request to include in Docket No. 09-04-21, a review of the Telco's cost of providing transit traffic to have merit. Accordingly, the Department incorporated the record of this proceeding into Docket No. 09-04-21 and indicated that it would address those issues raised by Pocket pertaining to transit service in Docket No. 09-04-21.

On September 15, 2009, the Department issued its draft Decision in this matter. All parties were offered the opportunity to file written exceptions and present oral argument concerning the draft Decision.

D. PARTIES

The Department recognized as parties to this proceeding: Youghiogheny Communications-Northeast, LLC d/b/a Pocket Communications, c/o Pullman & Comley, LLC , 90 State House Square, Hartford, Connecticut 06103; The Southern New England Telephone Company d/b/a AT&T Connecticut, 310 Orange Street, New Haven, Connecticut 06510; the Office of Consumer Counsel, Ten Franklin Square, New Britain, Connecticut 06105; Comcast Phone of Connecticut, Inc., c/o Robinson & Cole L.L.P., 280 Trumbull Street, Hartford, Connecticut 06103; Cox Connecticut Telcom, L.L.C., 1790 Utopia Road, Manchester, Connecticut 06042; MetroPCS New York, LLC, c/o Friend, Hudak & Harris, LLP, Three Ravinia Drive, Atlanta Georgia 30346-2117; Neutral Tandem-New York, LLC, c/o Murtha Cullina, LLP, CityPlace 1, 185 Asylum Street, Hartford, Connecticut 06103-3469; and Sprint Nextel Corporation, 2001 Edmund Halley Drive, Reston, Virginia 20191.

II. NOTICE OF REQUEST FOR WRITTEN COMMENTS

On February 25, 2009, the Department issued its Notice of Request for Written Comments (Notice) seeking comments on the Petition. The Department also requested written comments addressing the following:

1. Any differences and/or similarities between the Petition and the issues raised in Docket No. 02-01-23.

2. The need for a Department-approved TTS tariff in lieu of a Commercial Transit Agreement.

3. Whether TTS is a necessary service pursuant to Section 251 of the Telecommunications Act of 1996 (Telcom Act).

4. The applicability of Telcom Act Section 252 and the requirement that parties first attempt to negotiate an interconnection agreement that addresses TTS before seeking relief from the Department.

5. The applicability of Conn. Gen. Stat., §16-247b(b) to TTS and whether a need must be demonstrated.

6. The need for a Transit Traffic Factor (TTF). The development of the TTF and whether at 71% (in the case of Pocket) this factor is appropriate.

The Department received comments from the following: Pocket; AT&T; Cablevision Lightpath – CT, Inc. (Lightpath); Charter Fiberlink CT – CCO, LLC (Charter); Comcast Phone of Connecticut, Inc. (Comcast); Cox Connecticut Telcom, L.L.C. (Cox); MetroPCS New York, LLC (MetroPCS); the New England Cable and Telecommunications Association, Inc. (NECTA); Neutral Tandem-New York, LLC (Neutral Tandem); Sprint Communications, L.P., Sprint Spectrum, L.P., and Nextel Communications of the Mid-Atlantic, Inc. (collectively, Sprint) and Omnipoint Communications, Inc., d/b/a T-Mobile (T-Mobile).[2]

III. POSITIONS OF PARTIES

A. POCKET

Pocket states that the Petition is a continuation of the issues raised by Cox in Docket No. 02-01-23 that were never resolved and is based on AT&T's failure to comply with the Department orders issued in that proceeding. In the opinion of Pocket, favorable treatment of the Petition by the Department would result in fair TTS rates in Connecticut. Pocket concludes that many of the issues raised in the Petition are the same as those raised by Cox relative to the costs of transit traffic in the state.[3]

Pocket also argues that AT&T is offering competitive local exchange carriers (CLEC) TTS and not complying with state statute by offering TTS pursuant to an approved tariff (i.e., at a reasonable price). According to Pocket, TTS utilizes the same functionality as unbundled Tandem Switching and instead of sending traffic to its own end office to be terminated, the Telco sends the traffic to a third party network. Pocket notes that the Telco's Tandem Switching charges are $0.001468 per minute of use (MOU) which is lower than the $0.009 TTS MOU rate in the commercial agreement negotiated between AT&T and Pocket. Pocket asserts that the actual cost of providing transit switching will be significantly lower than the current rates once a cost of service study is completed and below the Telco's reciprocal compensation costs.[4]

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[2] By letter dated July 23, 2009, T-Mobile requested permission from the Department to withdraw from this proceeding. By letter dated August 6, 2009, the Department granted T-Mobile's request.

[3] Pocket Comments, pp. 8 and 9.

[4] Id., pp. 9 and 10.

Furthermore, neither the Federal Communications Commission (FCC) nor any federal or state courts have provided guidance as to whether TTS is subject to the Telcom Act. Pocket concedes that for purposes of this docket, TTS is subject to state law and that federal law issues can be avoided because state law applies. Nevertheless, Pocket believes that 47 U.S.C. §§251 and 252 apply to TTS because while they do not explicitly require the provision of TTS they do not preclude it either. Rather, the statutes require carriers to interconnect directly or indirectly. Therefore, AT&T is required to interconnect with Pocket for transmission and routing of telephone exchange service and exchange access destined to its end-users as well as to third parties.

Moreover, Pocket disagrees with AT&T in that a stay of the Docket No. 02-01-23 Decision was never lifted and therefore, the Decision in that docket does not exist as a matter of law. Pocket maintains that the stay was requested pending the appropriate Department and appellate review and when the appeal was withdrawn, the docket was subsequently closed without action by the Department. Pocket also maintains that were that Decision a nullity, there would have been no need to seek to have it vacated.[5] Pocket believes that Conn. Gen. Stat. §16-247b(b) applies to TTS and agrees with the Docket No. 02-01-23 Decision that a showing of need is not required.[6]

Lastly, Pocket states that unless demonstrated otherwise, the fact that AT&T cannot measure transit traffic as opposed to reciprocal compensation traffic, must be viewed as being deceptively hidden from the Department and competitors for over 10 years. Pocket therefore suggests that the Department require the Telco to eliminate the TTF.

Pocket argues that the TTF not only affects transit traffic, but also reciprocal compensation traffic which is governed by interconnection agreements. Pocket states that when those agreements were negotiated, no party was informed that the traffic being subjected to the terms and conditions of the agreement were being measured through a factoring mechanism. Consequently, until AT&T implements a technology that sufficiently measures actual minutes of use, that it not be allowed to charge a higher rate than the reciprocal compensation rate or the transit traffic rate whichever is lower. Pocket also suggests that in the interim, that the Department order an interim rate for transit traffic which would be equal to the reciprocal compensation rate ordered in Docket No. 09-04-21, subject to a true-up once the transit rate is determined. If the reciprocal compensation rate and the transit traffic rate vary, AT&T should then charge the carrier based on actual minutes of use.[7]

B. AT&T

AT&T argues the relief that Pocket requests is not within the Department's authority to grant, because the Commercial Transit Agreement (CTA) negotiated with and agreed to by Pocket, is a commercial agreement. Unlike an ICA, commercial agreements are not subject to regulation by the Department. The Telco maintains that

[5] Id., pp. 10-13.
[6] Id., p. 13.
[7] Id., pp. 15 and 16.

once the parties agreed to negotiate a commercial agreement for transit service, it was a given that they might not arrive at such an agreement because, by definition, neither party is obliged to accept the other's proposal. Since either party could have declined to proceed with a commercial agreement for any reason, AT&T claims that the Department cannot dictate any aspect of the agreement, including the rate.[8]

AT&T disagrees with the Pocket contention that the Telco has violated the Department's Decision in Docket No. 02-01-23. According to AT&T, that Decision was stayed on March 11, 2003, and the docket closed on March 27, 2007, with the stay never being lifted. Since the Department issued no other final Decision in the docket, the Telco concludes that Pocket's claim about transit rates is a Decision, which has no effect and imposes no obligation that the Telco could have violated. AT&T also states that in a December 22, 2004 draft Decision, the Department deleted the requirements that Pocket claims that the Telco violated. AT&T asserts that while a draft Decision, is not binding and has no effect, it demonstrates that the Department viewed the requirements of the January 15, 2003 Decision as being unlawful and unenforceable. In the opinion of the Telco, it makes no sense to find now that AT&T violated a Decision which the Department stayed and later found to be unlawful.[9]

Regarding the tariffing of TTS, the Telco claims that Conn. Gen. Stat. §16-247b(a) allows the Department to conduct a proceeding to decide whether to unbundle certain portions of a carrier's network, services, and functions if doing so is in the public interest, consistent with federal law, and technically feasible. If the Department makes those findings and requires unbundling, the unbundled items are required to be tariffed. AT&T contends that the Department has never conducted such a proceeding with respect to TTS (and could not do so in the context of a declaratory ruling petition), much less provided the required "notice and hearing" on the matter. Therefore, there is no requirement under Conn. Gen. Stat. §16-247b(a) that AT&T unbundle or tariff its transiting service, and the Telco could not have violated anything.

Further, even if the Department were to undertake such a proceeding, it could not find that requiring the unbundling and tariffing of TTS is in the public interest or consistent with federal law. The Telco maintains that there is widespread competition for TTS in Connecticut today and requiring the service to be tariffed would impede or prevent competition by preventing business-to-business negotiation of transiting arrangements. In the opinion of the Telco, such a result would be contrary to the state and federal policies to promote competition.[10]

Moreover, AT&T argues that TTS is not subject to Conn. Gen. Stat. §16-247b(b), because it is not a necessary service and is subject to competition. While acknowledging the December 22, 2004 draft Decision in Docket No. 02-01-23 found that transiting service was "interconnection" and that transiting service rates must be negotiated under 47 U.S.C. §252(a), and not be required to be tariffed, AT&T disagrees that TTS is "interconnection" or is subject to 47 U.S.C. §§251 and 252, and that the FCC has never found the service to be covered by those sections. AT&T suggests that

[8] AT&T Comments, p. 6.
[9] Id., pp. 6 and 7.
[10] Id., pp. 7 and 8.

only if the Department concluded that transiting was "interconnection" under 47 U.S.C. §251(c)(2), would its analysis in the December 22, 2004 draft Decision in Docket No. 02-01-23 be correct, and only then would transiting rates be subject to negotiation. Accordingly, AT&T concludes that Pocket's claims are without merit and the relief that Pocket seeks, overbroad.[11]

AT&T states that imposing a tariffing requirement would impede competition. Although it does not believe that 47 U.S.C. §251 applies to transiting, AT&T favors a pro-negotiation policy because it provides for creative solutions to individual situations and engages in "gives and takes" to address each carrier's specific needs. According to AT&T, tariffing requirements impair flexibility and at any given time the rate becomes controlling, precluding any meaningful negotiation. Also, if tariffing were required, transiting providers would be extremely reluctant to ever reduce that rate, because the moment the rate was lowered all other carriers would insist on the same rate under the filed tariff doctrine.

The Telco notes that a competitive TTS market has developed without the need for tariffs and that it has successfully negotiated transiting arrangements with numerous carriers and competitors. A tariffing requirement would prevent individualized negotiation of future agreements and would wreak havoc with the existing agreements to the extent carriers try to avoid their contracts by demanding the new tariffed rate.

AT&T claims that Conn. Gen. Stat. §16-247b(a) only authorizes the Department to initiate a proceeding to unbundle a telephone company's network, services and functions that are used to provide telecommunications services. In those cases, the Department can only require unbundling if it finds the requested unbundling is in the public interest, consistent with federal law, and technically feasible of being tariffed and offered separately or in combinations. If unbundling is required, then the unbundled network element, service, or function must be offered under tariff.

According to AT&T, if transiting were deemed to be "interconnection" under 47 U.S.C. §251, any tariffing requirement would be preempted because the states cannot require tariffing of items covered by 47 U.S.C. §251(c) and 47 U.S.C. §251/252 interconnection agreements.[12]

The Telco also asserts that since TTS is not "interconnection" under 47 U.S.C. §251, it is not subject to the mandatory negotiation and arbitration procedures or pricing standards 47 U.S.C. §252. Thus, TTS rates, terms and conditions cannot be required to be tariffed and must initially be negotiated between the requesting carrier and the ILEC as required by 47 U.S.C. §252(a). Only if negotiations fail could the requesting carrier or ILEC ask the Department to arbitrate rates, terms, or conditions for TTS. If TTS were deemed subject to 47 U.S.C. §251(c)(2), any arbitrated rates for TTS would have to comply with 47 U.S.C. §252(d)(1), which governs rates for interconnection. Doing that however, would be contrary to the goals of state and federal law and

[11] Id., pp. 8-10.
[12] Id., pp. 11-13.

eliminate any TTS competition, since TELRIC-based rates are set exceedingly low on the presumption there is no alternative supplier.[13]

Regarding the applicability of Conn. Gen. Stat. §16-247b(b) to TTS and whether a need must be demonstrated, AT&T contends that transiting does not fall within the definition of interconnection. Therefore, transiting service is not covered by the third sentence of that statute. Conn. Gen. Stat. Section 16-247b(b) also does not apply even if the Department were to find that transiting is interconnection. AT&T states that if TTS is deemed to be interconnection and subject to 47 U.S.C. §251(c)(2), then the rate for that service must be subject to negotiation under 47 U.S.C. §252(a). Should negotiations fail, then the rate would be subject to arbitration under 47 U.S.C. §252(b) and the federal pricing standard for interconnection in 47 U.S.C. §252(d). AT&T contends that state law would not apply and any attempt to apply state law would be preempted.

However, if the Department finds that TTS is not interconnection, then, in light of Conn. Gen. Stat. §16-247b(b), it could establish a rate if that item was necessary for other carriers to provide telecommunications service. AT&T claims that if TTS is a telecommunications service or function, then the Department is unable to regulate TTS rates because, transiting is not necessary for other carriers to be able to provide telecommunications services to customers. AT&T argues that Pocket has not demonstrated that TTS is necessary for carriers to serve their customers because Pocket can connect directly with other carriers, obtain transit services from other providers, or obtain TTS from AT&T at a negotiated, market-based rate under a commercial agreement. AT&T states that it is premature to conclude absent discovery, testimony, and the development of a factual record, that TTS is necessary for other carriers to serve their customers, because necessity cannot be assumed without an analysis of current market conditions and options.[14]

Lastly, the Telco claims that the TTF is used to determine how many minutes of transit service AT&T is providing to Pocket. Since Pocket does not currently deliver a significant amount of traffic to AT&T, there is no useful Connecticut history on which to base a TTF. AT&T states that it is reasonable to examine the distribution of traffic from another state to derive a TTF from which to negotiate. Since the only other state where Pocket and the Telco's ILEC affiliate have an interconnection arrangement is Texas, AT&T therefore concludes that Texas-billed usage to determine the 71% TTF is appropriate.[15]

C. LIGHTPATH

Lightpath requests that the Department to: 1) assert jurisdiction over AT&T transit rates; 2) replace AT&T's transit rates with those charged in Michigan unless AT&T can justify a higher rate through a cost showing; and 3) prohibit AT&T from applying a transit factor to all carriers.[16]

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[13] Id., p. 14.
[14] Id., pp. 16-18.
[15] Id., p. 18.
[16] Lightpath Comments, p. 1.

Lightpath states that the TTS rate it is currently charged by the Telco, $0.035, is significantly higher than the rate which is in dispute in this proceeding and far higher than those charged in other states. Cablevision states that even though AT&T's TTS rates remain the highest, its competitors' continued purchase of the service demonstrates that not only do they rely on the Telco's TTS, but market forces cannot constrain the price of TTS. To the extent the Telco's carrier agreements reflect TTS rates that are more than its Michigan affiliate's rate, Lightpath recommends that the Department require AT&T to replace its existing rate with the Michigan rate and to make a cost showing if AT&T wants to charge a higher rate.[17]

Additionally, Lightpath suggests that the Department refrain from permitting AT&T to apply the TTF on carriers' TTS. Lightpath disagrees that a TTF is necessary because the Telco is unable to distinguish CMRS transit from terminating traffic. According to Lightpath, AT&T is capable of receiving actual transit data and its ICA with the Telco already addresses traffic auditing for billing purposes. Lightpath also claims that AT&T monitors when calls terminate at NXX numbers that belong to Telco customers and it has not imposed a TTF in the past. Further, Lightpath asserts that AT&T has not identified the need for a TTF with carriers other than Pocket. Lastly, Lightpath maintains that a TTF would impose unnecessary costs and burdens on carriers to monitor how it is applied and create a disincentive for AT&T to update its network to properly identify transit traffic.[18]

D. CHARTER FIBERLINK CT - CCO, LLC

Charter urges the Department to assume jurisdiction over TTS and require the Telco to provide that service to all interconnecting carriers when requested at nondiscriminatory rates, terms and conditions that are just and reasonable.[19]

Charter claims that all local voice service providers in Connecticut except the Telco require a transit service that only AT&T can provide. Although there are at least two other carriers offering transit service or equivalent functionality in Connecticut, each can transit traffic only between and among the carriers to which it is interconnected, and together those providers are not interconnected to every other local carrier in the state.

Charter also states that all telecommunications carriers are required by 47 U.S.C. §251(a) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers, and all ILECs are required by 47 U.S.C. §251(c)(2) to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the ILEC's network that is at least equal in quality to that provided by the ILEC to itself or to any subsidiary, affiliate, or any other party to which the ILEC provides interconnection. Under 47 U.S.C. §252(d)(1), the rates an ILEC may charge for interconnection and network elements are based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element and may include a reasonable profit. 47 U.S.C.

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[17] Id., p. 2.
[18] Id., pp. 2 and 3.
[19] Charter Comments, p. 3.

§252(d)(2) further provides that the charges for transport and termination of traffic must allow for the recovery of a carrier's costs to transport and terminate a call and that the costs be based on a reasonable approximation of the additional costs of terminating such calls. According to Charter, the FCC found that the standards to be used to determine the rates under 47 U.S.C. §§252(d)(1) and 252(d)(2) were to be the same and established that such rates were to be based on the ILEC's long run incremental cost of providing the network element or transport and termination. Thus these rules have withstood appeal and require the transiting function be provided at TELRIC rates.

Additionally, while recognizing that the Telcom Act has a clear preference for interconnection arrangements via voluntary negotiation, Charter recommends that the Department require the Telco to provide TTS pursuant to 47 U.S.C. §251(c) at TELRIC rates. However, specific issues relating to interconnection between parties, such as how interconnection should be accomplished and the mechanisms for interconnection are better left to voluntary negotiation and arbitration on a case-by-case basis.[20]

Charter asserts that 47 U.S.C. §§251 and 252 preclude the Department from requiring a TTS tariff and the Telco from using a commercial agreement for the service. However, if TTS is not an obligation under 47 U.S.C. §251, Connecticut law requires that TTS be tariffed. Charter states that a commercial agreement that is not subject to Department oversight violates the law. Charter suggests that the Department use its authority to require the parties to negotiate an agreement to be filed as a tariff under the Department's strict guidance.

Charter further claims that a negotiated TTS contract tariff approved by the Department and not unilaterally prepared by the Telco, is appropriate because establishing an appropriate relationship between the carriers requires the negotiation of details that are specific to the carriers involved in the arrangement. For instance, the threshold used to determine when to transition to direct trunks, the method and frequency of measuring usage against such threshold, and the TTF (if required) would vary based on each carrier's particular traffic patterns. Such details are typically included in interconnection agreements and must be similarly provided for in any tariff if transit service were not a Section 251 obligation.

Moreover, Charter contends that Department oversight and approval is required to ensure that the rates for the Telco's transit service are just and reasonable. Pursuant to Conn. Gen. Stat. §16-247b(b), the Department not only has the authority to set TTS rates, but also must ensure that they are based on forward looking long-run incremental costs and are consistent with the provisions of 47 U.S.C. §252(d) because transit service is an interconnection service. While acknowledging the Telco contention that TTS is not an interconnection service, Charter maintains that the Department's rate-setting authority extends to telecommunications services pursuant to Conn. Gen. Stat. §16-247b(b), and such authority would be based on total service long run incremental cost (TSLRIC) with a reasonable mark-up.

Charter claims that the flexibility provided by contract tariffs would be consistent with the Department's statutory authority to prevent unreasonable discrimination in rates

[20] Id., pp. 3-6.

via tariffs. By requiring the Telco to provide TTS pursuant to contract tariffs, the Department establishes the pricing methodology and allows the parties to vary the rates and associated terms only if and when there was a reasonable, cost-based distinction supporting the variation. Department oversight of contract tariffs also allows for the monitoring of unreasonable discrimination and ensures that any carrier may obtain nondiscriminatory rates, terms and conditions.[21]

In addition, Charter contends that there is no requirement that a service be necessary in order to be subject to the provisions of §251 of the Telcom Act. Rather, ILECs must offer interconnection and network elements pursuant to 47 U.S.C. §251(c) regardless of whether they are strictly necessary. Charter agrees that the FCC has never determined that TTS is subject to 47 U.S.C. §251(c), and has implicitly ruled that its provision is an obligation governed by that section of the statute.

Specifically, 47 U.S.C. §251(c)(2) requires ILECs to provide interconnection with their network for the transmission and routing of telephone exchange service and exchange access. There is no limiting language that allows the Telco to provide only interconnection for the transmission and routing of traffic between a requesting interconnecting carrier's network and a Telco end office. Rather, that section is unlimited with respect to the scope of the routing and transmission that the Telco must provide an interconnected carrier. That section is also broad enough to include the routing and transmission of traffic between an interconnecting carrier's network and any end office (or equivalent facility), including those associated with the networks of other carriers that are interconnected with the Telco network, (i.e., other CLEC, CMRS, and ILEC networks). The Telco is also required, pursuant to 47 U.S.C. §251(c)(2)(C) to provide interconnection that is at least equal in quality to that provided by the ILEC to itself. If the Telco refuses to provide interconnection that permitted other carriers likewise to transmit and route their customers' traffic to those other networks, it would violate this requirement.

Charter maintains that TTS is encompassed within the statutory obligation to interconnect. Charter also maintains that the Telcom Act creates strict obligations, and the FCC's rules impose strict regulations on ILECs to assure nondiscriminatory interconnection because of their dominant market power. Charter therefore concludes that because 47 U.S.C. §251(c)(2) requires the Telco to provide requesting carriers interconnection to its network allowing them to deliver traffic originated on their networks to other carriers' networks which are directly interconnected to the Telco's network, and because TTS is the method by carriers are enabled to interconnect with the Telco's network to deliver traffic originated on their networks other carriers' networks that are directly interconnected to the Telco's network, the Telco's transit service is subject to 47 U.S.C. §251(c)(2).

While noting that the FCC has never explicitly ruled on this issue, Charter indicates that the FCC has implicitly ruled that transit service is subject to Section 251(c) of the Telcom Act. Charter cites to the Qwest Declaratory Ruling,[22] wherein the

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[21] Id., pp. 7-10.

[22] Memorandum Opinion and Order, Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual

FCC considered the issue of what agreements between ILECs and other carriers must be filed with state commissions pursuant to 47 U.S.C. §252(a)(1). The FCC concluded that any agreement entered into by an ILEC that creates an ongoing obligation pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation is an interconnection agreement that must be filed.

The FCC also determined in that ruling that only those agreements which contain an ongoing obligation relating to 47 U.S.C. §251(b) or (c) must be filed under Section 252(a)(1). No other agreements are required to be filed. Additionally, in the Qwest NAL,[23] the FCC agreed that all of the agreements that Qwest filed with the Minnesota Public Utilities Commission on March 25, and 26, 2003, were interconnection agreements subject to the Section 252(a)(1) of the Telcom Act filing requirement. Therefore, Charter concludes that the FCC held this agreement contains an ongoing obligation relating to the Telcom Act, Section 251(b) or (c). According to Charter, since none of these Section 251(b) obligations include transit service, transit service must therefore fall under Section 251(c) of the Telcom Act.

Charter also claims that the only time that the FCC has discussed transit service since the Qwest NAL is in a Further Notice of Proposed Rulemaking (FNPRM)[24] to develop a unified intercarrier compensation regime. Charter states that the FCC recognized the importance of transit service to the development of competition and the efficient exchange of traffic and that, the FCC said nothing in the Intercarrier Compensation FNPRM to suggest that an ILEC's transit service was not a 47 U.S.C. §251(c) interconnection service. Although the FCC has not expressly held that transit service is subject to 47 U.S.C. §251(c), Charter asserts that by including the agreement among those for which it proposed to fine Qwest, the FCC implicitly found that the provision of transit service is an ongoing obligation relating to 47 U.S.C. §251(c). According to Charter, because the Telco provides interconnection for the transmission and routing of its own traffic to the networks of other carriers, it must do so for other carriers as well.

Charter notes that at least 10 other state commissions have found that transit service is subject to 47 U.S.C. §251(c). Therefore, like those other state commissions, the Department must also find, as it did in Docket No. 02-01-23, that 47 U.S.C. §251 requires the Telco to provide transit service to other carriers.[25]

Regarding the applicability of 47 U.S.C. §252 and the requirement that parties first attempt to negotiate an interconnection agreement that addresses TTS before seeking relief from the Department, Charter states that as the federal courts held in

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Arrangements under Section 252(a)(1), 17 FCC Rcd. 19337 (FCC 02-276) (released October 4, 2002) (Qwest Declaratory Ruling).

[23] Notice of Apparent Liability for Forfeiture, In the Matter of Qwest Corporation Apparent Liability for Forfeiture, File No. EB-03-IH-0263, 19 FCC Rcd. 5169 (FCC 04-57) (released March 12, 2004) (Qwest NAL).

[24] Further Notice of Proposed Rulemaking, In the Matter of Developing a Unified Intercarrier Compensation Regime, 20 FCC Rcd. 4685 (released March 3, 2005), at ¶¶ 120-133 (Intercarrier Compensation FNPRM).

[25] Charter Comments, pp. 10-20.

Verizon North Inc. v. Strand and Indiana Bell Company, Inc. v. Indiana Utility Regulatory Commission, and as the Department found in its July 13, 2005 draft Decision in Docket No. 02-01-23, state commissions may not short-circuit the Telcom Act's negotiation and arbitration process by requiring or permitting ILECs to file tariffs for obligations governed by 47 U.S.C. §251(b) and (c). Transit obligations must be negotiated pursuant to 47 U.S.C. §252(a) and arbitrated pursuant to 47 U.S.C. §252(b).[26]

Similarly, Charter suggests that since Conn. Gen. Stat. §16-247b(b) applies to telecommunications services, functions, and network elements that are necessary to provide telecommunications services, the Department can exercise authority pursuant to Conn. Gen. Stat. §16-247b(b) over the services it determines are necessary. Contrary to the Telco's argument, if transit service were not governed by Section 251(c) of the Telcom Act, it nonetheless is a necessary service that would be subject to the Department's authority under Conn. Gen. Stat. §16-247b(b).

Charter maintains that transit service is necessary to provide telecommunications services. In this case, the question is not one of need, but whether TTS is necessary to provide telecommunications services that meet the goals outlined in Conn. Gen. Stat. §16-247a. Charter states that the Department is justified in determining that TTS is an essential service for the handling of telecommunications traffic between and among various carriers and that the provision of transit services is critical to encouraging the development and fostering of competition in the telecommunications marketplace because TTS permits the seamless carriage of telecommunications traffic between and among carriers, both incumbent and competitive.

TTS is also necessary to ensure the universal availability and accessibility of high quality, affordable telecommunications services to all residents and businesses in the state and to promote the development of effective competition. The use of transit service promotes competition by permitting the interconnection with all other carriers. The shared use of the network facilities through TTS facilitates maximum interoperability and interconnectivity between carriers by providing interconnection between carriers that cannot economically justify direct interconnection. This interconnected competition, in turn, promotes efficiencies that drive higher quality services at more affordable prices. Therefore, Charter concludes that TTS is necessary to provide telecommunications services within the meaning of Conn. Gen. Stat. §16-247b(b).

Additionally, Charter claims that the Telco provides no compelling support for its assertion that transit service is not a necessary service. Charter suggests that the Telco's argument that TTS is not necessary because Pocket and other competitive providers can connect directly with other carriers misses the point of necessary in the context of promoting a competitive telecommunications industry. According to Charter, the mere option of direct interconnection does not alleviate the necessity of TTS to implementing the goals of Conn. Gen. Stat. §16-247a. Rather, indirect interconnection should be made available as an alternative to direct interconnection. In the opinion of Charter, the Telco's argument is contrary to the goals of opening the

[26] Id., pp. 20 and 21.

telecommunications industry to competition and undermines the premise of Conn. Gen. Stat. §16-247b(b).

With regard to the Telco's claim that transit service can easily be obtained from other providers such as Neutral Tandem and Level 3, Charter contends that the Telco overstates the state of the competitive market for TTS. The availability of limited service from two competitive transit carriers does not make the Telco's transit service an unnecessary service. Instead, the availability of competition must simply be considered by the Department in implementing Conn. Gen. Stat. §16-247b in accordance with the goal to utilize forms of regulation commensurate with the level of competition in the relevant telecommunications service market.

Charter also claims the competitive transit service market to be nascent. While acknowledging that Neutral Tandem and Level 3 offer limited competitive transit service in Connecticut, their networks are not ubiquitous like the Telco's. Because the competitive transit provider networks represent only a fraction of the Telco's network, when interconnecting indirectly with some carriers, Charter suggests that a CLEC's choice of transit provider remains limited to the Telco. The ability of the emerging competitors to create interconnected networks as expansive as the Telco's remains dubious. Charter asserts that the Telco's advantage from its ubiquitous network is unlikely to be diminished by TTS competition any time soon because as the former monopolist places it in a position of great importance for the provision of transit service.

Additionally, Conn. Gen. Stat. §16-247b(b) provides that interconnection and network elements be priced based on forward looking long-run incremental costs, and be consistent with the provisions of 47 U.S.C. §252(d). Since TTS is an interconnection service, it should be priced in accordance with the guidelines in Conn. Gen. Stat. §16-247b(b) if it were not subject to the Telcom Act. While noting the Telco claim that TTS is transport without termination, Charter states that the Department still has the authority to set rates for transit service as a "telecommunications service." In this case, the Department would no longer necessarily be bound by forward looking long-run incremental costs or the provisions of 47 U.S.C. §252(d). Rather, the Department could require rates be based on TSLRIC with a set markup.

Regardless of the Telco's characterization of its transit service, Charter asserts that Connecticut law provides the Department with the statutory authority over such service. The Department has clear authority to set rates for services that are deemed necessary to provide telecommunications service under Conn. Gen. Stat. §16-247b(b). Charter also suggests that even for services that are not deemed necessary the Department has authority to set rates, but that authority is triggered differently. Specifically, the Department's broad authority under Conn. Gen. Stat. §16-247f(a) combined with its authority under Conn. Gen. Stat. §16-247a allows the Department to set a maximum markup when the ILEC seeks, contrary to the public interest, to charge excessive rates for services.

Finally, Charter claims that some aspects of the public interest are spelled out as the goals in Conn. Gen. Stat. §16-247a. Charter states that the Connecticut Supreme Court has held that the Department's authority may be triggered by a carrier's actions that impair competition. Should the Department determine that TTS is not strictly

necessary and therefore not subject to Conn. Gen. Stat. §16-247b(b), the fact remains that the Telco's provision of the service at supra-competitive rates would impair the public interest and competition, warranting Department intervention to establish an appropriate cost methodology and maximum markup.[27]

Regarding the TTF, Charter remarks that it is unclear whether the use of the TTF is necessary for proper billing for the Telco's transit service. Before permitting the Telco to impose a TTF, Charter recommends that the Department require the Telco to demonstrate that it cannot distinguish between transit traffic and other traffic. Charter also suggests as an example, requiring the use of separate trunk groups for transit traffic. If the Telco is unable to do so, then it should not be permitted to use traffic data provided by the other carrier for billing purposes. Moreover, even if the Telco demonstrates that the use of a TTF is necessary, Charter suggests that the Department require it to base the TTF on actual traffic exchanged within Connecticut, with periodic updates and a true-up if appropriate, rather than a charge based on traffic from another state.

Charter notes that the Telco's affiliates in other states require CLECs to establish trunk groups for the delivery and receipt of transit traffic that are separate from the trunk groups used to deliver traffic to be terminated by the ILEC so that transit traffic may readily be distinguished from other traffic. Charter also notes that the Telco has not indicated whether the inability of its systems to "determine how much is transit" is an inherent limitation in its switches or whether its systems could accurately identify transit traffic volumes if transit traffic were delivered over separate trunk groups. Charter posits it may be that the Telco's systems could distinguish between transit and other traffic if it applied a relatively inexpensive upgrade to its switch software. If so, the Department should consider whether to require such an upgrade especially if such upgrade would enable AT&T to identify transit traffic without the use of a TTF.

Charter further claims that the Telco appears to assert a different rationale for using a TTF (i.e., billing system limitations). According to Charter, this suggests that the limitation in the Telco's systems may not be an inability to distinguish between transit traffic and other traffic, but an inability to bill different rates for different traffic without the use of a TTF. In that case, Charter recommends that the Telco be required to develop the TTF for each month's invoice to a competitive carrier from the actual traffic delivered to it by that carrier during that month. Also, if this limitation applies only to wireless traffic, the Telco should not be permitted to use a TTF when transiting traffic for CLECs.

In the event that the Telco establishes that it is unable to distinguish transit traffic from other traffic by requiring the use of separate trunk groups, or by upgrading its switches at a reasonable cost, then the Department should allow for the possibility that a CLEC that delivers transit traffic to AT&T may be able to provide an accurate measurement of that transit traffic using its own switch records. While not all competitive carriers may have such a capability, where such capability exists, then the Telco should be required to use the other carrier's traffic measurements for billing purposes rather than relying on a TTF.

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[27] Id., pp. 21-27.

If a TTF is used for billing purposes, Charter recommends that it be based on the actual traffic that a competitive carrier delivers to the Telco, while permitting either carrier the ability to update the TTF often in order to insure that it continues to approximate actual relative traffic volumes. Unless the applicable rates for transit service and reciprocal compensation for traffic terminated on the Telco's network are the same, any other approach risks significant over-billing for transit traffic.[28]

E. COMCAST PHONE OF CONNECTICUT, INC.

Comcast believes that the Department should resolve this situation and order AT&T to perform a TELRIC cost of service study in a timely manner to develop a TTS rate that would be available to all carriers seeking transit service. Comcast suggests that in the interim, that the Department set a TTS rate based on the current rate charged by the Telco's Michigan affiliate, with a true-up if necessary.[29]

Comcast does not believe that a Department-approved TTS rate is necessary and it opposes one that is tariffed unless it is cost-based (i.e., TELRIC). Comcast also states that TTS should not be included in a commercial agreement because the Telco is obligated to provide TTS pursuant to 47 U.S.C. §251(c)(2). Rather, TTS should be included in interconnection agreements pursuant to 47 U.S.C. §251 and be based on TELRIC.[30]

Additionally, Comcast asserts that TTS is a necessary service subject to the requirements of Section 251 of the Telcom Act. While citing to 47 U.S.C. §153(47)(b) as well as Sections 251(a) and 251(c)(2) of the Telcom Act, Comcast concludes that transit traffic is included in the definition of telephone exchange service, of which AT&T is required to provide transmission to and interconnection with other carriers. Accordingly, Comcast suggests that the Department find TTS to be a necessary service under Section 251 of the Telcom Act and require a cost-based rate under Section 251(c)(2)(D) of that act.[31]

Regarding the requirement that parties first attempt to negotiate an interconnection agreement that addresses TTS before seeking relief from the Department, Comcast states that should the Department determine the service rate must be cost based, then there will be nothing to negotiate under an interconnection agreement. However, should the Department determine that the TTS rate not be cost based, then the rate would be subjection to negotiation including the institution of the timeline provided under 47 U.S.C. §252(e).[32]

Finally, Comcast asserts that the issue of need is self-evident in the context of TTS, since such service is required when traffic must be handed off from one carrier to another carrier through an intermediary. Because the Department cannot compel a

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[28] Id., pp. 27-30.
[29] Comcast Comments, pp. 1 and 2.
[30] Id., pp. 3 and 4.
[31] Id., pp.4-6.
[32] Id., p. 6.

CLEC to interconnect with another CLEC, there is no substitute for TTS in the event of carrier disputes, and as such, there will always be a need for TTS.[33]

F. COX CONNECTICUT TELECOM, L.L.C.

Cox reiterates that affordable transit service is of the utmost importance to fostering competitive telecommunications service as reflected in Docket No. 02-01-23. Cox states that access to reasonable and efficient transit traffic arrangements is necessary to continue to provide services to customers. Cox also states that it has been generally accepted that Connecticut law provides the authority for the Department to take reasonable measures to ensure the continued development of competition in Connecticut's telecommunications services via regulation of transit arrangements.[34]

Cox sees substantial merit to the contention that a Department-approved TTS tariff may be insufficient unless it is cost-based. According to Cox, this was its position in Docket No. 02-01-23 and, to the extent that CLECs are required to utilize the Telco for transit traffic service because other alternatives are not always available, remains Cox's position today. Cox also suggests that the ILEC transit service must be justified to the Department as being consistent with that offered by the ILEC's affiliated companies operating under the "AT&T corporate family" so that Connecticut CLECs are not being overcharged. Also, the TTS rate should be transparent and available to all telecommunications services providers.[35]

Additionally, Cox claims that consistent with the federal court memorandum opinion in Qwest Corp. v. Cox Nebraska Telcom, LLC, it is clear that the Department has authority over tandem transit arrangements offered by the Telco and such authority is consistent with Section 251 of the Telcom Act. TTS is an essential service and without it, Cox would be precluded from indirectly interconnecting with many CLECs, LECs and wireless carriers that it has not entered into direct interconnection agreements with. Therefore, without TTS, crucial inter-carrier (voice) traffic flows could be interrupted, thereby stifling competition.[36]

Regarding the applicability of 47 U.S.C. §252 requirements, Cox asserts that the duty to negotiate an interconnection agreement that addresses TTS should apply to the Telco as an ILEC. Cox also asserts that the language of 47 U.S.C. §252 was intended to require that negotiations be done in an expeditious manner, with certain timelines to be followed by the ILEC and the Department, all designed to ensure that competition would not be thwarted by delay. Cox suggests that even the Telco, has recognized that, absent an FCC or applicable federal court ruling binding in Connecticut, the Department may have the authority to regulate TTS pursuant to the provisions of Section 252. Cox further notes that in the Decision in Docket No. 02-01-23, the Department found its authority over TTS was consistent with both Sections 251 and 252 of the Telcom Act.[37]

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[33] Id., pp. 6 and 7.
[34] Cox Comments, pp. 1 and 2.
[35] Id., p. 3.
[36] Id., p. 4.
[37] Id., p. 5.

Lastly, Cox notes that the Department has previously determined that Conn. Gen. Stat. §16-247b(b) provides the agency with the authority to regulate the rates and charges for telephone company services, functions and UNEs that are necessary for the provision of telecommunications services. Cox also notes that in the Decision in Docket No. 02-01-23, the Department found that it had the authority over rates and charges for interconnection services including TTS without first having to demonstrate the necessity of such service. The Department also determined that there was sufficient evidence on the record of that proceeding to make such a finding of necessity.[38]

G. METROPCS NEW YORK, LLC

MetroPCS states in its preparation to enter the Connecticut wireless market, it sought to adopt an interconnection agreement with the Telco pursuant to Section 252(i) of the Telcom Act. In reviewing the Telco's interconnection agreements with other CMRS carriers, it discovered that several of those agreements contained no provision for transit services, and those that did, generally contained transit rates significantly higher than those prevailing in other markets where MetroPCS obtains transit service from AT&T's affiliates and higher than TELRIC rates for the various elements required to provide the service. Upon inquiry by MetroPCS, the Telco proposed to provide transit service pursuant to a so-called "commercial agreement" containing numerous objectionable terms, including many that MetroPCS believes to be unlawful. Consequently, MetroPCS urges the Department to assume jurisdiction over TTS and require the Telco to provide such service to all interconnecting carriers upon request at nondiscriminatory rates, terms and conditions that are just and reasonable.[39]

MetroPCS claims that all local voice service providers in Connecticut except the Telco require a transit service that only AT&T can provide. Although there are at least two other carriers offering transit service or equivalent functionality in Connecticut, each can transit traffic only between and among the carriers to which it is interconnected, and together those providers are not interconnected to every other local carrier in the state.

MetroPCS also states that all telecommunications carriers are required by 47 U.S.C. §251(a) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers, and all ILECs are required by 47 U.S.C. §251(c)(2) to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the ILEC's network that is at least equal in quality to that provided by the ILEC to itself or to any subsidiary, affiliate, or any other party to which the ILEC provides interconnection. Under 47 U.S.C. §252(d)(1), the rates an ILEC may charge for interconnection and network elements are based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element and may include a reasonable profit. 47 U.S.C. §252(d)(2) further provides that the charges for transport and termination of traffic must allow for the recovery of a carrier's costs to transport and terminate a call and that the costs be based on a reasonable approximation of the additional costs of terminating such calls. According to MetroPCS, the FCC found that the standards to be used to

[38] Id., pp. 5 and 6.
[39] MetroPCS Comments, pp. 3 and 4.

determine the rates under 47 U.S.C. §§252(d)(1) and 252(d)(2) were to be the same and established that such rates were to be based on the ILEC's long run incremental cost of providing the network element or transport and termination. Thus these rules have withstood appeal and require the transiting function be provided at TELRIC rates.

Additionally, while recognizing that the Telcom Act has a clear preference for interconnection arrangements via voluntary negotiation, MetroPCS recommends that the Department require the Telco to provide TTS pursuant to 47 U.S.C. §251(c) at TELRIC rates. However, specific issues relating to interconnection between parties, such as how interconnection should be accomplished and the mechanisms for interconnection are better left to voluntary negotiation and arbitration on a case-by-case basis.[40]

MetroPCS asserts that 47 U.S.C. §§251 and 252 precludes the Department from requiring a TTS tariff and the Telco from using a commercial agreement for the service. However, if TTS is not an obligation under 47 U.S.C. §251, Connecticut law requires that TTS be tariffed. MetroPCS states that a commercial agreement, not subject to Department oversight violates the law. MetroPCS suggests that the Department use its authority to require the parties to negotiate an agreement to be filed as a tariff under the Department's strict guidance.

MetroPCS further claims that a negotiated TTS contract tariff approved by the Department and not unilaterally prepared by the Telco, is appropriate because establishing an appropriate relationship between the carriers requires the negotiation of details that are specific to the carriers involved in the arrangement. For instance, the threshold used to determine when to transition to direct trunks, the method and frequency of measuring usage against such threshold, and the TTF (if required) would vary based on each carrier's particular traffic patterns. Such details are typically included in interconnection agreements and must be similarly provided for in any tariff if transit service were not a Section 251 obligation.

Moreover, MetroPCS contends that Department oversight and approval is required to ensure that the rates for the Telco's transit service are just and reasonable. Pursuant to Conn. Gen. Stat. §16-247b(b), the Department not only has the authority to set TTS rates, but also must ensure that they are based on forward looking long-run incremental costs and are consistent with the provisions of 47 U.S.C. §252(d) because transit service is an interconnection service. While acknowledging the Telco contention that TTS is not an interconnection service, MetroPCS maintains that the Department's rate-setting authority extends to telecommunications services pursuant to Conn. Gen. Stat. §16-247b(b), and such authority would be based on TSLRIC with a reasonable mark-up.

MetroPCS claims that the flexibility provided by contract tariffs would be consistent with the Department's statutory authority to prevent unreasonable discrimination in rates via tariffs. By requiring the Telco to provide TTS pursuant to contract tariffs, the Department establishes the pricing methodology and allows the parties to vary the rates and associated terms only if and when there was a reasonable,

[40] Id., pp. 4-7.

cost-based distinction supporting the variation. Department oversight of contract tariffs also allows for the monitoring of unreasonable discrimination and ensures that any carrier may obtain nondiscriminatory rates, terms and conditions.[41]

In addition, MetroPCS contends that there is no requirement that a service be necessary in order to be subject to the provisions of §251 of the Telcom Act. Rather, ILECs must offer interconnection and network elements pursuant to 47 U.S.C. §251(c) regardless of whether they are strictly necessary. MetroPCS agrees that the FCC has never determined that TTS is subject to 47 U.S.C. §251(c), and has implicitly ruled that its provision is an obligation governed by that section of the statute.

Specifically, 47 U.S.C. §251(c)(2) requires ILECs to provide interconnection with their network for the transmission and routing of telephone exchange service and exchange access. There is no limiting language that allows the Telco to provide only interconnection for the transmission and routing of traffic between a requesting interconnecting carrier's network and a Telco end office. Rather, that section is unlimited with respect to the scope of the routing and transmission that the Telco must provide an interconnected carrier. That section is also broad enough to include the routing and transmission of traffic between an interconnecting carrier's network and any end office (or equivalent facility), including those associated with the networks of other carriers that are interconnected with the Telco network, (i.e., other CLEC, CMRS, and ILEC networks). The Telco is also required pursuant to 47 U.S.C. §251(c)(2)(C) to provide interconnection that is at least equal in quality to that provided by the ILEC to itself. If the Telco refuses to provide interconnection that permits other carriers likewise to transmit and route their customers' traffic to those other networks, it would violate this requirement.

MetroPCS maintains that TTS is encompassed within the statutory obligation to interconnect. MetroPCS also maintains that the Telcom Act creates strict obligations, and the FCC's rules impose strict regulations on ILECs to assure nondiscriminatory interconnection because of their dominant market power. MetroPCS therefore concludes that because 47 U.S.C. §251(c)(2) requires the Telco to provide requesting carriers interconnection to its network allowing them to deliver traffic originated on their networks to other carriers' networks which are directly interconnected to the Telco's network, and because TTS is the method by which carriers are enabled to interconnect with the Telco's network to deliver traffic originated on their networks to other carriers' networks that are directly interconnected to the Telco's network, the Telco's transit service is subject to 47 U.S.C. §251(c)(2).

While noting that the FCC has never explicitly ruled on this issue, MetroPCS indicates that the FCC has implicitly ruled that transit service is subject to Section 251(c) of the Telcom Act. MetroPCS cites to the Qwest Declaratory Ruling, wherein the FCC considered the issue of what agreements between ILECs and other carriers must be filed with state commissions pursuant to Section 252(a)(1) of the Telcom Act. The FCC concluded that any agreement entered into by an ILEC that creates an ongoing obligation pertaining to resale, number portability, dialing parity, access to rights-of-way,

[41] Id., pp. 8-11.

reciprocal compensation, interconnection, unbundled network elements, or collocation is an interconnection agreement that must be filed.

The FCC also determined in that ruling that only those agreements which contain an ongoing obligation relating to 47 U.S.C. §251(b) or (c) must be filed under 47 U.S.C. §252(a)(1). No other agreements are required to be filed. Additionally, in the Qwest NAL, the FCC agreed that all of the agreements that Qwest filed with the Minnesota Public Utilities Commission on March 25, and 26, 2003, were interconnection agreements subject to the 47 U.S.C. §252(a)(1) filing requirement. Therefore, MetroPCS concludes that the FCC held this agreement contains an ongoing obligation relating to the Telcom Act, Section 251(b) or (c). According to MetroPCS, since none of these 47 U.S.C. §251(b) obligations include transit service, TTS must therefore fall under 47 U.S.C. §251(c).

MetroPCS also claims that the only time that the FCC has discussed transit service since the Qwest NAL is in a Intercarrier Compensation FNPRM to develop a unified intercarrier compensation regime. MetroPCS states that the FCC expressly recognized the importance of transit service to the development of competition and the efficient exchange of traffic and that, the FCC said nothing in the Intercarrier Compensation FNPRM to suggest that an ILEC's transit service was not a 47 U.S.C. §251(c) interconnection service. Although the FCC has not expressly held that transit service is subject to 47 U.S.C. §251(c), MetroPCS asserts that by including the agreement among those for which it proposed to fine Qwest, the FCC implicitly found that the provision of transit service is an ongoing obligation relating to 47 U.S.C. §251(c). According to MetroPCS, because the Telco provides interconnection for the transmission and routing of its own traffic to the networks of other carriers, it must do so for other carriers as well.

MetroPCS notes that at least 10 other state commissions have found that transit service is subject to 47 U.S.C. §251(c). Therefore, like those other state commissions, the Department must also find, as it did in Docket No. 02-01-23, that 47 U.S.C. §251 requires the Telco to provide transit service to other carriers.[42]

Regarding the applicability of 47 U.S.C. §252 and the requirement that parties first attempt to negotiate an interconnection agreement that addresses TTS before seeking relief from the Department, MetroPCS states that as the federal courts held in Verizon North Inc. v. Strand and Indiana Bell Company, Inc. v. Indiana Utility Regulatory Commission, and as the Department found in its July 13, 2005 draft Decision in Docket No. 02-01-23, state commissions may not short-circuit the Telcom Act's negotiation and arbitration process by requiring or permitting ILECs to file tariffs for obligations governed by 47 U.S.C. §251(b) and (c). Transit obligations must be negotiated pursuant to 47 U.S.C. §252(a) and arbitrated pursuant to 47 U.S.C. §252(b).[43]

Similarly, MetroPCS suggests that since Conn. Gen. Stat. §16-247b(b) applies to telecommunications services, functions, and network elements that are necessary to provide telecommunications services, the Department can exercise authority pursuant

[42] MetroPCS Comments, pp. 11-21.
[43] Id., pp. 21 and 22.

to Conn. Gen. Stat. §16-247b(b) over the services it determines are necessary. Contrary to the Telco's argument, if transit service were not governed by Section 251(c) of the Telcom Act, it nonetheless is a necessary service that would be subject to the Department's authority under Conn. Gen. Stat. §16-247b(b).

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TTS is also necessary to ensure the universal availability and accessibility of high quality, affordable telecommunications services to all residents and businesses in the state and to promote the development of effective competition. The use of transit service promotes competition by permitting the interconnection with all other carriers. The shared use of the network facilities through TTS facilitates maximum interoperability and interconnectivity between carriers by providing interconnection between carriers that cannot economically justify direct interconnection. This interconnected competition, in turn, promotes efficiencies that drive higher quality services at more affordable prices. Therefore, MetroPCS concludes that TTS is necessary to provide telecommunications services within the meaning of Conn. Gen. Stat. §16-247b(b).

Additionally, MetroPCS claims that the Telco provides no compelling support for its assertion that transit service is not a necessary service. MetroPCS suggests that the Telco's argument that TTS is not necessary because Pocket and other competitive providers can connect directly with other carriers misses the point of necessary in the context of promoting a competitive telecommunications industry. According to MetroPCS, the mere option of direct interconnection does not alleviate the necessity of TTS to implementing the goals of Conn. Gen. Stat. §16-247a. Rather, indirect interconnection should be made available as an alternative to direct interconnection. In the opinion of MetroPCS, the Telco's argument is contrary to the goals of opening the telecommunications industry to competition and undermines the premise of Conn. Gen. Stat. §16-247b(b).

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MetroPCS argues that a former monopolist and two emerging competitors do not make a competitive market. MetroPCS states that the two other competitors are unable to offer the same service as the Telco because they do not interconnect to all telecommunications carriers. Similarly, the emergence of another transit provider would not make the market fully competitive. MetroPCS therefore suggests that the Department cannot find that the current market for transit service in Connecticut is competitive until there are at least three transit providers, each of whom can provide indirect interconnection to substantially all other carriers in the state.

Additionally, Conn. Gen. Stat. §16-247b(b) provides that interconnection and network elements be priced based on forward looking long-run incremental costs, and be consistent with the provisions of 47 U.S.C §252(d). Since TTS is an interconnection service, it should be priced in accordance with the guidelines in Conn. Gen. Stat. §16-247b(b) if it were not subject to the Telcom Act. While noting the Telco claim that TTS is transport without termination, MetroPCS states that the Department still has the authority to set rates for transit service as a "telecommunications service." In this case, the Department would no longer necessarily be bound by forward looking long-run incremental costs or the provisions of 47 U.S.C. §252(d). Rather, the Department could require rates be based on TSLRIC with a set markup.

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Finally, MetroPCS claims that some aspects of the public interest are spelled out as the goals in Conn. Gen. Stat. §16-247a. MetroPCS states that the Connecticut Supreme Court has held that the Department's authority may be triggered by a carrier's actions that impair competition. Should the Department determine that TTS is not strictly necessary and therefore not subject to Conn. Gen. Stat. §16-247b(b), the fact remains that the Telco's provision of the service at supra-competitive rates would impair

the public interest and competition, warranting Department intervention to establish an appropriate cost methodology and maximum markup.[44]

Regarding the TTF, MetroPCS remarks that it is unclear whether the use of the TTF is necessary for proper billing for the Telco's transit service. Before permitting the Telco to impose a TTF, MetroPCS recommends that the Department require the Telco to demonstrate that it cannot distinguish between transit traffic and other traffic. MetroPCS also suggests as an example, requiring the use of separate trunk groups for transit traffic. If the Telco is unable to do so, then it should not be permitted to use traffic data provided by the other carrier for billing purposes. Moreover, even if the Telco demonstrates that the use of a TTF is necessary, MetroPCS suggests that the Department require it to base the TTF on actual traffic exchanged within Connecticut, with periodic updates and a true-up if appropriate, rather than a charge based on traffic from another state.

MetroPCS notes that the Telco's affiliates in other states require CLECs to establish trunk groups for the delivery and receipt of transit traffic that are separate from the trunk groups used to deliver traffic to be terminated by the ILEC so that transit traffic may readily be distinguished from other traffic. MetroPCS also notes that the Telco has not indicated whether the inability of its systems to "determine how much is transit" is an inherent limitation in its switches or whether its systems could accurately identify transit traffic volumes if transit traffic were delivered over separate trunk groups. MetroPCS posits it may be that the Telco's systems could distinguish between transit and other traffic if it applied a relatively inexpensive upgrade to its switch software. If so, the Department should consider whether to require such an upgrade especially if such upgrade would enable AT&T to identify transit traffic without the use of a TTF.

MetroPCS further claims that the Telco appears to assert a different rationale for using a TTF (i.e., billing system limitations). According to MetroPCS, this suggests that the limitation in the Telco's systems may not be an inability to distinguish between transit traffic and other traffic, but an inability to bill different rates for different traffic without the use of a TTF. In that case, MetroPCS recommends that the Telco be required to develop the TTF for each month's invoice to a competitive carrier from the actual traffic delivered to it by that carrier during that month. Also, if this limitation applies only to wireless traffic, the Telco should not be permitted to use a TTF when transiting traffic for CLECs.

In the event that the Telco establishes that it is unable to distinguish transit traffic from other traffic by requiring the use of separate trunk groups, or by upgrading its switches at a reasonable cost, then the Department should allow for the possibility that a CLEC that delivers transit traffic to AT&T may be able to provide an accurate measurement of that transit traffic using its own switch records. While not all competitive carriers may have such a capability, where such capability exists, then the Telco should be required to use the other carrier's traffic measurements for billing purposes rather than relying on a TTF.

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[44] Id., pp. 21-27.

MetroPCS asserts that it has insufficient information to determine whether a 71% TTF is appropriate in Pocket's case, but there apparent reasons why it may not be. First, the Telco proposes to base the TTF for Pocket on a traffic mix that Pocket's Texas affiliate delivers to the AT&T Texas affiliate. Yet transit traffic patterns in Texas are likely to be significantly different from those in Connecticut because of the presence of a large number of small, rural ILECs in Texas. MetroPCS claims that most Texas CMRS carriers and CLECs are likely to need to exchange small volumes of traffic with a number of small rural ILECs, which increases the percentage of their total traffic that is transited as compared to Connecticut, with no small rural ILECs. MetroPCS also notes that Texas has a significant number of small CLECs and smaller rural CMRS carriers. According to MetroPCS, it is unclear whether a Texas-derived factor includes CMRS-to-CMRS traffic. MetroPCS states that generally, as a CMRS carrier establishes itself, it typically will establishes direct connections to other CMRS carriers, which can and does substantially reduce transit traffic. Additionally, a Texas TTF of 71% seems high because it is significantly higher than the Texas TTF because well under half of the traffic that its Texas affiliate delivers to the Telco's Texas affiliate is transit traffic. MetroPCS concludes that this demonstrates the fallacy with using traffic factors derived from traffic data in other states as the method for assessing transit traffic in Connecticut.

MetroPCS further argues that even if a relatively high TTF is appropriate, when a CMRS carrier or CLEC first enters the Connecticut market, the correct TTF is likely to decline significantly over time. According to MetroPCS, when a carrier first enters a new market, it is likely to establish direct interconnections only with the dominant ILEC and perhaps a few other large carriers with whom it expects to exchange significant volumes of traffic almost from the outset. As a result, a relatively high percentage of its total traffic may be traffic that must be transited to carriers with which it has not yet established such direct connections. MetroPCS asserts that as the carrier's traffic volumes grow, it will establish more direct interconnection arrangements with other carriers and reduce the percentage of its transit service traffic. If not updated, the traffic factor may also deter these direct connections because even with the traffic moving off the Telco's facilities, the traffic factor would remain at the same level despite lower volumes of transit traffic.

Consequently, MetroPCS recommends that the TTF be developed on the basis of the actual traffic that it delivers to the Telco, and either carrier should have the right and the incentive to update the TTF often in order to insure that it continues to approximate actual relative traffic volumes, especially as they add direct connections. Unless the applicable rates for transit service and reciprocal compensation for traffic terminated on the Telco's network are the same, any other approach risks significant over- or under-billing.

Instead of basing a TTF for a new entrant on traffic patterns in another market, MetroPCS suggests that the Department require the Telco to base the initial TTF for a new entrant upon the traffic patterns of similarly situated carriers, subject to a true-up. For example, the initial TTF for a CMRS carrier, could be based upon the TTFs of established Connecticut CMRS carriers of comparable size, while the initial TTF for a CLEC could be based upon the TTFs of other CLECs that serve similar kinds of customers. In the opinion of MetroPCS, such TTFs would be more likely to reasonably approximate the actual TTFs of such new entrants than those derived from traffic

patterns in other states. MetroPCS also recommends that any initial TTF be subject to a true-up based on studies of actual traffic volumes and patterns between the Telco and the individual competitive carrier in order to insure that billing for transit traffic and other traffic is as accurate as reasonably possible.[45]

H. THE NEW ENGLAND CABLE AND TELECOMMUNICATIONS ASSOCIATION, INC.

NECTA believes that the Department possesses the statutory authority to review and, if necessary, regulate TTS rates and practices. NECTA suggests that the Department exercise its authority as needed to ensure that TTS rates are reasonable and do not impede telecommunications competition.

NECTA also states that the Telco's TTS rates are unacceptably high and much higher than the rates AT&T's affiliates charge in the other states where they provide the service. As a result, NECTA suggests that the Department address the rates in its review of the issues raised during this proceeding.

Additionally, NECTA is concerned with the Telco's use of the TTF. According to NECTA, AT&T has not shown that such a factor is necessary or reasonable and NECTA claims that it is not aware of precedent that would support its use in Connecticut. NECTA also expresses concern that implementation of a TTF without supporting justification would impose cost burdens on competitive telecommunications carriers and impede competition.[46]

I. NEUTRAL TANDEM-NEW YORK, LLC

Neutral Tandem claims that unlike the situation which existed at the time of Docket No. 02-01-23, competition has developed in the market for transit services. Requiring AT&T to provide its TTS at cost-based rates would threaten the competitive market for transit services and be inconsistent with Connecticut law; and in light of the competitive alternatives that now exist in the market for transit services, requiring AT&T to provide those services at cost-based rates would be inconsistent with Section 251 of the Telcom Act.[47]

Neutral Tandem argues that unlike the situation presented to the Department in Docket No. 02-01-23, alternative transit providers now provide carriers with realistic competitive alternatives to using AT&T's transit services to exchange traffic indirectly with other carriers in Connecticut. Neutral Tandem also argues that it is clear that the Department's Decision in Docket No. 02-01-23 was premised on the finding that competitive carriers did not have realistic alternatives to AT&T's transit services.

According to Neutral Tandem, the competitive landscape has changed dramatically since the Department issued its Decision in Docket No. 02-01-23. At that time, Neutral Tandem had not yet begun providing alternative transit services. However, it now provides those services to competitive carriers statewide in Connecticut. Neutral

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[45] Id., pp. 30-35.
[46] NECTA Comments, pp. 1 and 2.
[47] Neutral Tandem Comments, p. 3.

Tandem also asserts that it has the ability to deliver transit traffic to almost every substantial cable company, wireless provider, and CLEC in Connecticut, delivering 80 million minutes of local transit traffic each month. Neutral Tandem believes that it has acquired a substantial overall share of the local transit market in Connecticut.

Although Neutral Tandem believes it is the largest alternative transit provider in Connecticut, it acknowledges that it is not the only carrier offering competitive transit services. Neutral Tandem notes that Level 3, Hypercube and Peerless Networks, have publicly stated that they offer competitive tandem transit services in several markets nationwide. Neutral Tandem states that the development of competition in the transit market is not unique to Connecticut and that competition has developed in the transit market throughout the country.

Therefore, Neutral Tandem submits that it would not be appropriate for the Department to adopt regulatory requirements for AT&T's TTS based on an analogy between the current transit market and the market that existed at the time of its Decision in Docket No. 02-01-23. Rather, the Department should make a complete assessment, including the development of a full factual record, of the robust and ever-growing competitive market for transit services in Connecticut, before adopting any requirements.[48]

Neutral Tandem basis its belief of the competitive transit traffic market in Connecticut due to competing carriers making the investments necessary to develop facilities-based alternatives to AT&T's transit services. Neutral Tandem states that it is clear that the development of facilities-based competition in the transit market has positive consequences from a public policy perspective (e.g., on prices and service etc.). Moreover, the introduction of additional facilities-based transit providers such as Neutral Tandem provides other important public policy benefits to Connecticut, including promoting network redundancy and disaster recovery.

Neutral Tandem warns however, that requiring AT&T to provide TTS at cost-based rates would threaten the ongoing development of that competitive market, which in turn would be inconsistent with Connecticut law. According to Neutral Tandem, requiring the Telco to provide transit services at cost-based rates would be inconsistent with the continued development of facilities-based TTS. Thus, while requiring incumbents to provide key services to competitors at cost-based rates can give a short-term "boost" to competition, it can also retard investment, handicap competition and discourage alternative means of achieving the same result that could conceivably enhance competition in the long run.

Neutral Tandem suggests that if the Department were to impose cost-based rates on AT&T, competing transit providers will have no choice but to match that rate in order to retain customers, even if the rate were set at near-confiscatory levels. There would be no incentive for additional transit providers to enter the market, and by setting rates at near-confiscatory levels, the Department could force competitive facilities-based transit providers out of the market, leaving Connecticut carriers and end-users without the redundancy, reliability, and other benefits provided by their presence.

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[48] Id., pp. 3-6.

Neutral Tandem argues that such a result is not supported by the objectives of Connecticut law. Pursuant to Conn. Gen. Stat. §16-247a, the Department is charged to implement Conn. Gen. Stat. §16-247b(b). Requiring AT&T to provide transit service at cost-based rates would be inconsistent with all of the Conn. Gen. Stat. §16-247a goals and inconsistent with the recognition in Conn. Gen. Stat. §16- 247f that noncompetitive services provided by AT&T can become competitive over time. Neutral Tandem therefore concludes that such a requirement would be both bad policy and inconsistent with Connecticut law.[49]

Neutral Tandem further argues that even if Pocket were correct that requiring AT&T to provide TTS at cost-based rates is appropriate under Connecticut law, such a requirement would run afoul of the Telcom Act. According to Neutral Tandem, incumbent-provided TTS is not a necessary service for competing carriers, and no other statutory authority in that act supports such a requirement. Neutral Tandem also argues that it is clear that Congress intended competitive carriers to have cost-based access only to those parts of incumbents' networks and services that are truly necessary in order for the competitive carriers to provide services.

Additionally, Neutral Tandem claims that the FCC has never found that incumbents like AT&T are required to provide transit service at cost-based rates under federal law. Neutral Tandem states that the FCC rules do not require incumbent LECs to provide transiting. Pocket thus requests the Department to bypass the FCC and require that AT&T provide additional, non-necessary services at a cost-based rate which would be inconsistent with the Telcom Act.

Neutral Tandem maintains that it is clear that in Connecticut, alternatives to incumbent-provided transit services exist for carriers seeking to route traffic through indirect interconnection. Incumbent-provided transit services are not in any way necessary in order for competitive carriers such as Pocket to exchange traffic indirectly with other competitive carriers in Connecticut.

Lastly, Neutral Tandem recognizes that the Department may have a place in regulating certain aspects of TTS, including taking steps to ensure that competitive carriers have access to transiting services statewide. However, the Department should not interfere in the competitive transit market by adopting undue price regulation. Neutral Tandem suggests that the Department continue to allow the TTS market be set via negotiation and other competitive forces, rather than allow parties to bypass the negotiation process and seek more favorable terms through regulatory intervention than what they can obtain in the free market.[50]

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[49] Id., pp. 6-10.
[50] Id., pp. 10-14.

J. SPRINT AND T-MOBILE

Sprint and T-Mobile (collectively, the Wireless Carriers) submit that transit service is a necessary service pursuant to Section 251 of the Telcom Act and that the appropriate rate for TTS is TELRIC.[51]

The Wireless Carriers claim that the FCC has recognized that indirect interconnection is a form of interconnection explicitly recognized by the Telcom Act, although it has not issued a binding decision on this issue. They also state that if the provision of TTS is not a required 47 U.S.C §251 obligation, then the ILECs clearly have the ability to abuse its control over the ubiquitous legacy network to harm competitors and consumers by charging excessive rates. Pursuant to 47 U.S.C §251(c)(2), the ILECs are required to provide TTS and that they interconnect with competitors for the transmission and routing of telephone exchange service and exchange access. Since that section of the Telcom Act does not limit the routing and transmission that the ILECs must provide, the Wireless Carriers conclude that it is broad enough to include the routing and transmission of traffic to other carriers that are connected to the ILEC network including CLECs and CMRS providers. In the opinion of the Wireless Carriers, the prevailing weight of authority indicates that the Telcom Act obligates the ILECs to provide TTS. The Wireless Carriers conclude that in order to give the Telcom Act its intended meaning and allow competitors to use indirect interconnection, the ILECs must be required to provide transit service.[52]

Additionally, the Wireless Carriers argue that TTS must be offered at TELRIC-based rates. According to the Wireless Carriers, numerous state commissions and the District Court of Nebraska have interpreted the Telcom Act to mean that TTS must be provided at TELRIC rates. They state that as a 47 U.S.C §251 obligation, TTS is subject to TELRIC pricing which was established by the FCC as the proper pricing methodology for 47 U.S.C §251(c)(2) interconnection services. The Wireless Carriers note that state commissions are nearly uniform in their view that TTS must be provided at TELRIC rates. The Wireless Carriers also note that if an ILEC is permitted to charge whatever rate it wants, other carriers would be at a distinct competitive disadvantage when compared to the ILEC, which is able to provide TTS to itself at economic cost.[53]

IV. DEPARTMENT ANALYSIS

Pocket has requested a declaratory ruling from the Department that the Telco is in violation of Conn. Gen. Stat. §16-247b(b); and the Department's orders in Docket No. 02-01-23. Pocket also petitions the Department for a declaratory ruling that AT&T is in violation of the arbitration rules set forth in 47 U.S.C. §§251 and 252, federal and state law relating to the TTF.[54] Before addressing the Petition, the Department begins its analysis with a brief summary of its Decision in Docket No. 02-01-23.

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[51] Wireless Carriers Written Comments, p. 2.
[52] Id., pp. 2-6.
[53] Id., pp. 6-8.
[54] Petition, p. 1.

A. DOCKET NO. 02-01-23

In its July 3, 2002 Interim Decision in Docket No. 02-01-23, the Department concluded that Conn. Gen. Stat. §16-247b(b) provided the authority to regulate the rates and charges for telephone company services, functions and UNEs that are necessary. In that Decision, the Department stated that a plain reading of that statute did not place a similar restriction on the rates for interconnection services, including the Telco's TTS. Conn. Gen. Stat. §16-247b(b) states in pertinent part:

> Each telephone company shall provide reasonable nondiscriminatory access and pricing to all telecommunications services, functions and unbundled network elements and any combination thereof necessary to provide telecommunications services to customers. The department shall determine the rates that a telephone company charges for telecommunications services, functions and unbundled network elements and any combination thereof, that are necessary for the provision of telecommunications services. The rates for interconnection and unbundled network elements and any combination thereof shall be based on their respective forward looking long-run incremental costs, and shall be consistent with the provisions of 47 U.S.C. 252(d).[55]

In the January 15, 2003 Decision in Docket No. 02-01-23, the Department found that the Telco was obligated to provide TTS pursuant to 47 U.S.C. §251(c).[56] The Department also determined that 47 U.S.C. §251(a) required that each telecommunications carrier has the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.[57] Moreover, the Department believed that 47 U.S.C. §251(c)(2) provided for the physical linking of telecommunications networks for the mutual exchange of traffic. Specifically, this section provided for the interconnection of telecommunications carriers' network facilities (e.g., ILECs, CLECs etc.) for purposes of exchanging traffic.[58]

The Department also addressed in the January 15, 2003 Decision in Docket No. 02-01-23, whether transit service was necessary and whether the Telco's offering of the service was competitive. In particular the Department found that Conn. Gen. Stat. §16-247b(b) provides it with the authority to regulate the rates and charges for telephone company services, including transit traffic service. The Department has already addressed the necessary nature of transit traffic service to some telecommunications carriers offering service in the state. In particular, the Department determined:

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[55] Docket No. 02-01-23 July 3, 2002 Interim Decision, p. 4.
[56] January 15, 2003 Decision, p. 12.
[57] Id.
[58] Id.

> . . . that the Legislature recognized the "necessary" nature of interconnection services and their value to an integrated telecommunications network (i.e., the public switched telecommunications network) when drafting Conn. Gen. Stat. §16-247b(b). To interpret the exception otherwise would be of little value to individual telecommunications service providers since end users would only be able to communicate with other subscribers to their respective service providers or require the maintaining of multiple service accounts with other service providers to reach those subscribers of those providers. Clearly, interconnection was a necessary function in the Legislature's eyes in order to provide for an efficient mutual exchange of telecommunication traffic.[59]

Since 47 U.S.C. §251(a) required each telecommunications carrier to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers, the Department also held that 47 U.S.C. §251(c)(2) provided for the physical linking of telecommunications networks for the mutual exchange of traffic. Specifically, that section provided for the interconnection of telecommunications carriers' network facilities (e.g., ILECs, CLECs, CMRS providers, etc.) for purposes of exchanging traffic. The Department also noted that the FCC had provided for tandem transiting arrangements in its First Report and Order in CC Docket 96-98.[60] In particular, the FCC's determination that indirect connection satisfied a telecommunications carrier's duty to interconnect pursuant to §251(a) of the Telcom Act.[61]

Lastly, the Department believed its conclusion to assume jurisdiction over transit services was correct based on the Supreme Court EPS Decision's treatment of the above mentioned federal provisions and J. Katz's analysis that:[62]

> There is no express limitation in §251, however, on an incumbent carrier's duty to provide reasonable and nondiscriminatory rates. Even if we assume that §251 cannot be construed to *authorize* the department to ensure reasonable and nondiscriminatory rates for network elements that are not necessary, there clearly is no language that *prohibits* any action with respect to those elements. Indeed, under the plaintiff's view, §251 (c) simply does not apply to services that are not necessary. Accordingly, we find nothing in the express language of the 1996 federal act that would preclude the department from

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[59] Id., pp. 11 and 12.

[60] CC Docket No. 96-98, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, and CC Docket No. 95-185, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report and Order (FRO), Released August 8, 1996.

[61] January 15, 2003 Decision, Docket No. 02-01-23, p. 12.

[62] 261 Conn.1 at p. 36.

> regulating under state law in the present case to protect the public's interest in affordable, high quality telecommunications service.[63]

While AT&T correctly notes that the January 15, 2003 Decision in Docket No. 02-01-23 was stayed, only the orders in that Decision were the subject of the stay. The Department's analysis, findings, conclusions and resulting exercise of authority over transit traffic service still remain intact. No other changes to that Decision ensued. Accordingly, the Department will address the Petition below based on that Decision.

B. TRANSIT TRAFFIC SERVICE

The 47 U.S.C. §251a(1) obligation imposed on telecommunications carriers to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers continues to remain as does the 47 U.S.C. §251(c)(2)(C) and (D) obligations imposed on local exchange carriers. In particular, the ILECs are required to provide interconnection that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection;[64] and to provide rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and 47 U.S.C. §252.[65]

Similarly, the interconnection and unbundling provisions of Conn. Gen. Stat. §16-247b(b) continue to apply, and have also been unchanged since the Department issued its Docket No. 02-01-23 Decision in January 2003. Specifically, the requirement that the Department determine the rates that a telephone company charges for telecommunications services, functions and unbundled network elements and any combination thereof, that are necessary for the provision of telecommunications services remains unchanged. The requirement that interconnection and unbundled network element rates and any combination thereof, be based on their respective forward looking long-run incremental costs, and be consistent with 47 U.S.C. §252(d) also remains. The Department notes that 47 U.S.C. §252(d) requires that the rates for interconnection and network element charges be just and reasonable, be based on the cost of providing the interconnection or network element, be nondiscriminatory, and may include a reasonable profit.

The Telco disagrees with the Department finding in its January 15, 2003 Decision in Docket No. 02-01-23, that transit service is interconnection or subject to 47 U.S.C. §§251 and 252.[66] AT&T also argues that were the Department to conclude that transit service was interconnection, pursuant to 47 U.S.C. §251(c)(2), then the Telco should be afforded the opportunity to negotiate transiting rates in the first instance. The Department notes that only AT&T has taken this position that transit service is not

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[63] January 15, 2003 Decision, Docket No. 02-01-23, pp. 12 and 13.
[64] 47 U.S.C. §251(c)(2)(C).
[65] 47 U.S.C. §251(c)(2)(D).
[66] AT&T Written Comments, p. 9.

interconnection in this docket, a position the Telco initially raised and the Department rejected in Docket No. 02-01-23.[67]

During this proceeding, the Telco also argued, as it did during Docket No. 02-01-23, that TTS was not necessary for purposes of Conn. Gen. Stat. §16-247b(b). Specifically, the Telco argued that because it was a substitute for a CLEC's provision of direct connections to other carriers' networks, transit service was not necessary for their provision of telecommunications services. Additionally, there is widespread competition among transiting providers.[68] Neutral Tandem presented a similar argument by claiming that alternative transit providers now offer carriers competitive alternatives to using the Telco's transit service such as Level 3, Hypercube and Peerless Networks.[69]

The Department finds that since January 2003, the FCC and a number of states have addressed the issue of transit service. For example, in its Further Notice of Proposed Rulemaking released on March 3, 2005 in CC Docket No. 01-92,[70] the FCC recognized that the availability of transit service was increasingly critical to establishing indirect interconnection – "a form of interconnection explicitly recognized and supported by the [Telcom] Act." The FCC also stated that "[W]ithout the continued availability of transit service, carriers that are indirectly interconnected may have no efficient means by which to route traffic between their respective networks."[71]

Those states addressing this issue have required that transit service be provided by the ILEC pursuant to 47 U.S.C. §§251 and 252 and that the service be priced at TELRIC. For example, the Arkansas Public Service Commission (PSC) ruled that the Telco's affiliate operating in that state must provide transit service pursuant to U.S.C. 47 §251(c). Similarly, the California Public Utilities Commission ruled that to the extent that transit traffic is local exchange traffic subject to 47 U.S.C. 251(b)(5), the rates for transit service must be TELRIC-based. Similarly, the Michigan PSC has required ILECs to provide tandem transit services pursuant to 47 U.S.C. §§251 and 252.[72]

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[67] In the January 15, 2003 Decision, the Department believed that the Telco misinterpreted Conn. Gen. Stat. § 16-247b(b) and the reference that the rates for interconnection services be consistent with the provisions of 47 USC §252(d). Specifically, the Telco's contention that 47 U.S.C. §252(d) limits the application of interconnection services which falls under the purview of 47 U.S.C. §251(c)(2) does not discuss transit traffic services for the purpose of transporting calls across the local exchange carrier's network for the purpose of indirect interconnection. January 15, 2003 Decision, p. 12.

[68] The Telco presented a similar argument in Docket No. 02-01-23 which was rejected by the Department. See the January 15, 2003 Decision, pp. 10-12.

[69] Neutral Tandem Written Comments, pp. 4 and 5; AT&T Written Comments, p. 12

[70] See In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, (Intercarrier Comp FNPRM).

[71] Intercarrier Comp FNPRM, ¶125.

[72] See for example: Telcove Investment, LLC's Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, and Applicable State Laws for Rates, Terms, and Conditions of Interconnection with Southwestern Bell Telephone L.P. d/b/a SBC Arkansas, Docket No. 04-167-U, Memorandum and Order (Ark. PSC, Sept. 15, 2005) at 37; see also In the Matter of the Petition of Southwestern Bell Telephone, L.P. D/B/A SBC Arkansas for Compulsory Arbitration of Unresolved Issues for a Successor Interconnection Agreement to Arkansas 271 Agreement (A2A), Docket No. 05-081-U, Memorandum Opinion and Order; Application by Pacific Bell Telephone Company d/b/a SBC California (U 1001 C) for Arbitration of an Interconnection Agreement with MCImetro Access Transmission Services LLC (U 5253 C) Pursuant to Section 252(b) of the Telecommunications Act of 1996, California Public Utilities Commission Decision

The majority of the participants to this proceeding have demonstrated that the offering of transit service was consistent with the goals outlined in Conn. Gen. Stat. §16-247a and that it was necessary in the provision of telecommunications services in the state.[73] Specifically, transit service is necessary to ensure the universal availability and accessibility of high quality, affordable telecommunications services and promote competition by permitting the interconnection with all other carriers. Transit service also facilitates maximum interoperability and interconnectivity between carriers by providing interconnection between carriers that cannot economically justify direct interconnection. In so doing, carrier efficiencies are promoted thus driving higher quality services at more affordable prices. Absent transit service, carriers would be precluded from indirectly interconnecting with CLECs and wireless carriers resulting in interrupted traffic flows thus stifling competition.[74]

The Department is not persuaded by the Telco and Neutral Tandem argument that there is widespread competition among transiting providers in Connecticut and that other carriers have publicly stated that they offer competitive transit services in several markets nationwide.[75] Despite their argument, the record does not support a f9inding that there are an adequate number of transit service providers or that they possess a sufficient market share which permits the service to be priced at a market rate. The Department also believes that the large disparity between the Telco's cost of providing transit service and the actual rates charged is a more accurate indication of the limited competition in the market. The lack of power that market forces have had on the Telco's transit service prices as exhibited by a large disparity between AT&T's cost of providing TTS and the various rates charged to the different carriers also contributes to Department's belief that effective competition for this service does not exist. While Neutral Tandem has indicated that Peerless Networks was offering transit service in Connecticut, in an interrogatory response submitted in Docket No. 09-04-21, Peerless Networks stated that it was not offering service.[76] The Department also questions the competitive nature of the market when the carriers offering transit service in the state are not interconnected with every carrier's local network as is the Telco.[77] In the opinion of the Department, the small number of carriers currently offering transit service in Connecticut does not make it a competitive service offering. And while Neutral Tandem claims to carry 80 million MOU per month, the Department has no frame of reference to accurately measure the impact that amount of traffic has in the Connecticut market. Clearly, Neutral Tandem has its own self-interests rather than the public interest in mind by arguing that transit service should be priced based on market forces rather than pricing TTS at TSLRIC-based prices.

06-08-029, Application 05-05-027, (August 24, 2006); and Petition of Level 3 Communications, LLC, for arbitration pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, and the applicable state laws for rates, terms, and conditions of an interconnection agreement with Michigan Bell Telephone Company, d/b/a SBC Michigan, Case No. U-14152, Decision of the Arbitration Panel (Mich PSC Dec. 10, 2004).

[73] See for example: Pocket Written Comments, p. 13; Charter Written Comments, p. 21; Cox Written Comments, p.4; and MetroPCS Written Comments, p. 23.

[74] See MetroPCS Written Comments, pp. 22-24.

[75] See AT&T Connecticut Written Comments, p. 8; Neutral Tandem Written Comments, pp. 3-6.

[76] Peerless Networks Interrogatory Response to ATT-1.

[77] Charter Written Comments, pp. 3–6.

Were the Department to continue to allow the Telco to price TTS as a competitive service, such a move would not foster competition or protect the public interest as required by Conn. Gen. Stat. §16-247f(a). The Department merely looks to the Telco's cost of providing TTS as submitted in Docket No. 09-04-21, the range of rates charged the carriers to transit their traffic over the Telco network and AT&T's forced requirement that these carriers enter into commercial agreement negotiations rather than through an ICA process in order to purchase the service is an indication that the Conn. Gen. Stat. §16-247a goals were not being met.[78]

The Department also questions the Telco and Neutral Tandem argument that TTS is a competitive service when only one other competitive carrier other than Neutral Tandem (i.e., Level 3) may be offering transit service in the state. Additionally, there is no indication from Neutral Tandem that its network or any other transit service provider's network for that matter is ubiquitous like the Telco's.

Lastly, the Department notes that if the Telco believes that there is sufficient competition in the TTS market, AT&T may have, at any time, sought reclassification of the service from the noncompetitive service to emerging competitive or competitive service category pursuant to Conn. Gen. Stat. §16-247f(c). No such information or a request from AT&T to reclassify its transit service to a competitive service classification was presented during this proceeding. This very same issue was raised during Docket No. 02-01-23 and as of this date, the Telco has not formally requested, nor has the Department approved, reclassification of the transit traffic service offering.[79] Therefore, absent a change to the applicable statutes, before the Telco's TTS or any other noncompetitive or emerging competitive service may be treated as a competitive service, the provider of the noncompetitive service (the Telco) must file for reclassification, and the Department must approve such reclassification as prescribed in Conn. Gen. Stat. §16-247f(d).[80]

Accordingly, in light of the above, the Department hereby reaffirms its January 15, 2003 Decision in Docket No. 02-01-23 that it continues to have subject matter jurisdiction over and statutory authority to regulate transit service and its rates. Consistent with that Decision, the Department will continue to require that TTS be

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[78] MetroPCS Written Comments, pp. 3 and 4.

[79] The Telco has filed for reclassification by Petition dated September 15, 2009 in Docket No. 09-09-15, Petition of The Southern New England Telephone Company d/b/a AT&T Connecticut to Reclassify Local Tandem Transit Service Under Conn. Gen. Stat. §16-247f. The current schedule calls for a Final Decision on January 27, 2010. Until such time as the Department determines that TTS is an emerging or competitive service, it remains non-competitive.

[80] On July 10, 2009, Neutral Tandem petitioned the Department to reclassify tandem transit service from the noncompetitive to the competitive category pursuant to Conn. Gen. Stat. §16-247. Docket No. 09-07-04 Petition to Reclassify Local Tandem Transit Service, was established by the Department to investigate this matter. In its petition, Neutral Tandem requested that the Department determine the appropriate competitive classification for transit service provided by the Telco and Verizon New York, Inc. Neutral Tandem also requests that the Department determine that a "cost-based" pricing model based on the TELRIC methodology was not appropriate for the ILECs' transit service. By the Department's Decision dated August 26, 2009, that petition was dismissed because Neutral Tandem was not the proper party to petition the Department to reclassify a competitor's (i.e., the Telco's) service to the competitive category.

offered pursuant to 47 U.S.C. §§251 and 252 at TSLRIC–based rates. Additionally, due to the Telco's vast ubiquitous network as well as the limited number of alternatives available to the CLECs, CMRS providers etc., there has been no demonstration that an effective competitive market for transit service exists.

C. PETITION

Pocket requests that the Department declare that the Telco is in violation of: Conn. Gen. Stat. §16-247b(a), Conn. Gen. Stat. §16-247b(b), and in violation of the Department's January 15, 2003 Decision in Docket No. 02-01-23. Pocket also requests that the Department declare the Telco in violation of 47 U.S.C. §§251 and 252 and in violation of the negotiation rules set forth by the FCC and the Department and require the Telco to negotiate an ICA in good faith. Additionally, Pocket requests that the Department declare the TTF clause be stricken from the commercial agreement. Further, Pocket requests that the Department investigate the Telco pursuant to Conn. Gen. Stat. §16-41 and whether AT&T should be subject to civil penalties for its violations of state law, 47 U.S.C. §§251 and 252 and the negotiation rules set forth by the FCC and the Department. Lastly, Pocket requests that the Department order further relief as law and equity dictates.[81]

The Telco argues that the Petition should be dismissed because the statute that it was filed under does not authorize the Department to entertain Pocket's claims or to grant the relief it requests. The Telco also argues that the two claims that Pocket alleges are not cognizable under any theory. In particular, Pocket's claim that AT&T Connecticut violated its duty to negotiate in good faith by not introducing the TTF in the parties' commercial agreement and that the Department's authority to regulate rates for telecommunications services occurs only when the services are necessary for the provision of services to customers. According to the Telco, there has been no such showing with respect to TTS. Nor can the Department regulate TTS rates in a proceeding other than a proceeding under the Telcom Act, unless the Department is willing to decide that transit rates are not subject to that act.[82]

The Department has previously determined that Conn. Gen. Stat. §4-176 permits, inter alia, that the Department may issue a declaratory ruling regarding the applicability of specified circumstances to a provision of the general statutes, regulations or final decision. The Department also determined that the circumstances encompass the Telco's compliance with Conn. Gen Stat. §16-247b and subsequent Department Decisions. This is clearly within the scope of Conn. Gen. Stat. §4-176. Accordingly, the Department rejected the Telco's argument.[83]

Pocket has requested a declaratory ruling that the Telco is in violation of state and federal statutes and that AT&T violated the Department and FCC negotiation rules. First, as noted above, the Orders contained in the Department's January 15, 2003 Decision in Docket No. 02-01-23 were stayed, and as such, they could not have been violated by the Telco. However, since only the orders in the January 15, 2003 Decision

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[81] Petition, pp. 11 and 12.
[82] AT&T Connecticut January 15, 2009 Motion to Dismiss, p. 1.
[83] See the Department's letter to Diane C. Iglesias, dated February 5, 2009.

in Docket No. 02-01-23 were stayed, the Telco should have in accordance with the language of that Decision, offered carriers the opportunity to discuss TTS as part of an ICA negotiated pursuant to 47 U.S.C. 252.[84] However, since the Department finds that Pocket has entered into negotiations with the Telco for purposes of producing a commercial agreement that included TTS and a TTF and because of these commercial agreement negotiations, and its lack of authority over the resulting commercial agreement, the Department can not issue a ruling finding the Telco in violation of Department orders.

However, the record indicates that in some cases, AT&T has not provided for transit services in its carrier ICAs or if it has, it required that the price of the service be so high, carriers may have been forced into formal negotiations as part of a commercial agreement process. The Department has determined that since January 2003, transit services are a form of interconnection and should be provided to requesting carriers pursuant to 47 U.S.C. §§251 and 252. The use of commercial agreements to resolve TTS/TTF issues should not have been utilized since such agreements require the carriers to be charged rates not approved by the Department. In the instant case, negotiations for TTS should have been conducted with Pocket (and MetroPCS) pursuant to 47 U.S.C. §252 rather than commercial agreements whereby the resulting TTS and TTF rates would have been subject to Department review and approval. Accordingly, the Telco shall refrain from employing such negotiating tactics that places the carriers in the untenable situation of being forced to sign commercial agreements in lieu of ICAs that are subject to Department review and approval.

In addition, the Petition and the record of this proceeding and Docket No. 09-04-21 developed thus far, indicates that the Telco's TTS rates are excessive and AT&T has not been forthcoming with the necessary information to the Department to accurately assess the Telco's TTS service offering. In particular, the large disparity between the Telco's cost of providing TTS and the rates charged for that service is an indication that these rates most likely would not have been approved had the provisions of 47 U.S.C. 252 been followed by AT&T. While the Department acknowledges the "give and take" that often occurs during negotiations between parties for purposes of interconnection and commercial agreements, in the case of the latter agreements, no such formal Department review of the TTS and TTF rates has occurred. In the opinion of the Department, interconnection and network element rates should be based on their forward looking long-run incremental costs and be priced consistent with the provisions of 47 U.S.C. §252(d). For purposes of TTS and the TTF, the Department finds that this requirement was not followed by the Telco, and as discussed in greater detail below, these rates should be reduced, subject to a true up, pending the completion of the Department's investigation of the Telco's cost of service studies in Docket 09-04-21.

D. INTERIM RATES

In its April 14, 2009 motion, Pocket requested the Department to issue an Interim Decision requiring the Telco to implement an interim rate of $0.001984 for transit traffic, subject to a true-up, and include a review of its cost to provide transit traffic in the cost study being reviewed in Docket No. 09-04-21 (Interim Decision Motion). In its response

[84] See MetroPCS Written Comments, pp. 3 and 4.

to the Interim Decision Motion, the Department denied Pocket's request because it had not offered any new evidence supporting a change to that rate at that time. Nevertheless, the Department accepted Pocket's request to include in Docket No. 09-04-21, a review of the Telco's cost of providing transit traffic and agreed to address those cost of service issues pertaining to transit service in Docket No. 09-04-21.

On July 17, 2009, the Telco filed its cost of service study in Docket No. 09-04-21. In light of that filing, Pocket again argued that it should not be forced to continue to pay inflated rates because the Telco had failed to provide an adequate cost of service study in Docket No. 09-04-21. Consequently, Pocket suggested that the rates as produced in those studies be imposed as interim rates effective from July 17, 2009, until final rates are approved by the Department.[85]

The Department has imposed interim rates in the past when it determined a sizable disparity existed between the Telco's cost of providing a service and the charge imposed on its customers.[86] The Department has also imposed interim rates when the Telco failed to meet the Department's directives.[87] In the instant proceeding, the Telco has been repeatedly directed to submit a cost of service study that supports its TTS rates.[88] When issuing those directives, the Department expected the Telco to follow the June 15, 1995 Decision in Docket No. 94-10-01, DPUC Investigation into The Southern New England Telephone Company's Cost of Providing Service, and subsequent Department Cost of Service Decisions, and that the filing requirements contained in those Decisions would be followed. The Telco submitted its cost study results in Docket No. 09-04-21 on July 17, 2009, which included a review of the cost of providing TTS. Based on its preliminary review, the Department has found that not only did the Telco's cost study results fall short of meeting those study requirements, there existed a significant disparity between the rates charged and the Telco's proposed cost of providing its TTS.

Accordingly, because the TTS and TTF rates have resulted from a commercial agreement which have not been approved by the Department, and because the Telco

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[85] Pocket July 28, 2009 Motion Re: Cost Study and Request for Interim Rates, p. 4.

[86] See the February 3, 1999 Decision in Docket No. 98-09-01 DPUC Investigation of The Southern New England Telephone Company's UNE Non-Recurring Charges, wherein the Department found that the Telco was imposing the same UNE non-recurring charges (NRC) on resellers that it was imposing on facilities-based carriers ($427.89 or $486.24 as opposed to $72.00) when the resellers' customers migrated to them from the Telco. In that Decision, the stated "(G)iven the large disparity between the Telco's existing NRCs and those proposed in this proceeding, the Telco should have, in the spirit of promoting local competition in Connecticut, proposed that the $72.00 NRC be imposed on an interim basis pending the conclusion of this docket." February 3, 2009 Decision, Docket No. 98-09-01, p. 4. Consequently, the Telco was ordered to submit an interim Migration Charge Tariff that would remain in effect pending the conclusion of that proceeding. Id., p. 5.

[87] See the January 5, 2000 Decision in Docket No. 98-09-01, wherein the Department found that the Telco did not file non-recurring charge cost of service studies in compliance with the Decision in Docket No. 97-04-10. Accordingly, the Department required that the Telco reduce its unbundled network element non-recurring rate elements by 50% until such time as the Telco had complied with the cost study filing requirements ordered in Docket No. 97-04-10. January 5, 2000 Decision, Docket No. 98-09-01, pp. 36 and 37.

[88] See interrogatories TE-1 and TE-4 as well as the Department's May 20, 2009 and June 12, 2009 letters to the Telco.

has failed to adhere to previously established directives, the Department will require AT&T to reduce its TTS rate to TSLRIC plus a reasonable markup of 35%, until the conclusion of its investigation in Docket No. 09-04-21. At that time, the Department will also require that a true-up be conducted based on the results of its completed investigation in that proceeding. The Department will impose this rate requirement on the Telco in light of Verizon North Inc. v. Strand and Indiana Bell Tel. Co. v. Indiana Utility Regulatory Commission, because there has been some attempt by AT&T and Pocket to negotiate an ICA, as well as an arbitration proceeding conducted earlier before the Department.[89] Accordingly, the Telco will be directed below to submit this rate (TSLRIC plus 35% markup) to the Department, for its review and approval, by October 14, 2009.

While Pocket has brought the Petition before the Department for a ruling, the Department is of the opinion that this Decision should apply to all telecommunications services providers purchasing TTS from the Telco. As noted above, purchase of TTS is typically pursuant to an ICA or CA. The Department believes that since this Decision would apply to all carriers, change of law or other applicable provisions of the ICA or CA should be enacted so that these providers may avail themselves of the new rates.

Regarding the TTF, the Telco states that it does not have the capability of billing differing rate elements for different types of traffic billed on a MOU basis. Consequently, only a single MOU rate can be billed to wireless service provider customer accounts for both reciprocal compensation and transit traffic. Since Pocket does not currently deliver a significant amount of traffic to the Telco, AT&T utilized Texas-billed usage as a proxy in order to determine a transit percentage.[90]

The Department finds as telling the MetroPCS comments addressing the derivation and application of the TTF. Most notable was MetroPCS' remarks concerning its experience in Texas and the industry differences there when compared to Connecticut. MetroPCS' points are well taken and as a result, the Department will require the Telco to revise the TTF by utilizing billing data from similarly situated wireless providers already offering wireless service in Connecticut. Additionally, the Department will require that the TTF be subject to a true-up based on actual traffic volumes and patterns between the Telco and Pocket. Based on that data, the Department would expect that a more accurate TTF be developed and imposed, subject to a true-up at the conclusion of Docket No. 09-04-21. The Telco will be directed below to submit this initial TTF rate to the Department, for its review by October 14, 2009.

If the Telco cannot develop a TTF that more accurately reflects Pocket's (or any other similarly situated carrier's) Connecticut traffic experience, then AT&T should provide the Department with other options that provides the same end result. In particular, the Telco will be required to report to the Department, no later than October 14, 2009, whether the use separate trunk groups for carrying TTS that are separate and

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[89] See Docket No. 08-10-29, Petition of Youghiogheny Communications-Northeast, LLC d/b/a Pocket Communications for Arbitration Pursuant to the Telecommunications Act of 1996 to Establish an Interconnection Agreement with The Southern New England Telephone Company d/b/a AT&T Connecticut.

[90] Telco Response to Interrogatory TE-3.

distinct from those that carry other traffic can be used; an indication as to whether the Telco's switches can be upgraded to specifically identify TTS by wireless and wireline carriers, and the associated cost of the upgrade; and any other measure that the Telco could use to provide an accurate measure of Pocket's or other similarly situated carrier's TTS usage.

V. FINDINGS OF FACT

1. Conn. Gen. Stat. §16-247b(b) provides the authority to regulate the rates and charges for telephone company services.

2. Conn. Gen. Stat. §16-247b(b) requires the Department to determine the rates that a telephone company charges for telecommunications services, functions and unbundled network elements and any combination thereof, that are necessary for the provision of telecommunications services.

3. Conn. Gen. Stat. §16-247b(b) does not place similar restrictions on the rates for interconnection services, including the Telco's TTS.

4. The Telco is obligated to provide TTS pursuant to 47 U.S.C. §251(c).

5. Each telecommunications carrier has the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers pursuant to 47 U.S.C. §251(a).

6. ILECs must provide interconnection that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of 47 U.S.C. §251(c)(2) and 47 U.S.C. §252.[91]

7. 47 U.S.C. §251(c)(2) provides for the physical linking of telecommunications networks for the mutual exchange of traffic.

8. 47 U.S.C. §252(d) requires that the rates for interconnection and network element charges be just and reasonable and be based on the cost of providing the interconnection or network element and nondiscriminatory, and may include a reasonable profit.

9. While the January 15, 2003 Decision in Docket No. 02-01-23 was stayed, only the orders in that Decision were the subject of the stay. The Department's analysis, findings, conclusions and resulting exercise of authority over transit traffic service still remain intact.

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[91] 47 U.S.C. §251(c)(2)(D).

10. Since the Docket No. 02-01-23 Decision was rendered, no changes to the statutory authority under which the Department assumed jurisdiction over TTS have occurred.

11. The FCC has recognized that the availability of transit service was increasingly critical to establishing indirect interconnection and that without the continued availability of transit service, carriers that are indirectly interconnected may have no efficient means by which to route traffic between their respective networks.

12. A number of states have required that transit service be provided by the ILEC pursuant to 47 U.S.C. §§251 and 252 and that the service be priced at TELRIC.

13. Transit service is necessary to ensure the universal availability and accessibility of high quality, affordable telecommunications services and promote competition by permitting the interconnection with all other carriers.

14. Transit service facilitates maximum interoperability and interconnectivity between carriers by providing interconnection between carriers that cannot economically justify direct interconnection.

15. Without transit service, carriers would be precluded from indirectly interconnecting with CLECs and wireless carriers resulting in interrupted traffic flows and stifling competition.

16. There is not an adequate number of transit service providers that possess a sufficient market share that permits TTS to be priced at a market rate.

17. Not every transit service provider in the state is interconnected with every carrier as is the Telco.

18. Before TTS and any other noncompetitive or emerging competitive service may be treated as a competitive service, the noncompetitive service provider (the Telco) must file for reclassification and the Department must approve such reclassification as prescribed in Conn. Gen. Stat. §16-247f(d).

19. Pocket has entered into negotiations with the Telco for purposes of producing a commercial agreement that included TTS and a TTF.

20. Interconnection and network element rates should be based on forward looking long-run incremental costs and be priced consistent with the provisions of 47 U.S.C. §252(d). For purposes of pricing TTS and the TTF, this requirement was not being followed.

21. The Department has imposed interim rates in the past when it determined a sizable disparity existed between the Telco’s cost of providing a service and the charge imposed on its customers.

22. The Telco it does not have the capability of billing differing rate elements for different types of traffic billed on a MOU basis.

VI. CONCLUSION AND ORDERS

A. CONCLUSION

The Department hereby reaffirms its January 15, 2003 Decision in Docket No. 02-01-23 that it continues to have subject matter jurisdiction over and statutory authority to regulate transit service and its rates. Consistent with that Decision, the Department will continue to require that TTS be offered pursuant to 47 U.S.C. §§251 and 252 at TSLRIC–based rates.

While Pocket has entered into negotiations with the Telco for purposes of producing a commercial agreement that included TTS and a TTF, the Department does not have the authority to order changes to such agreements. Consequently, the Department will not require that the TTF clause be stricken from the commercial agreement. However, the Department would expect that any change of law provisions would take effect, thus requiring deletion of the TTS and TTF provisions from the AT&T/Pocket commercial agreement. Similarly, because Pocket and AT&T entered into a commercial agreement for purposes of negotiating a TTS and TTF, the Department will not initiate a Conn. Gen. Stat. §16-41 fining proceeding at this time.

Nevertheless, negotiations for TTS should have been conducted pursuant to 47 U.S.C. §252 rather than commercial agreements, thus allowing the resulting TTS and TTF rates to be subject to Department review and approval. The use of commercial agreements to resolve TTS/TTF issues should be avoided. The Department also concludes that the Telco should refrain from employing negotiating tactics that places carriers in untenable situations forcing them away from ICAs in favor of commercial agreements.

Finally, while the Telco has submitted its cost study results in Docket No. 09-04-21, the Department's preliminary review of those study results indicates that not only have those study results fallen short of meeting its study requirements, there exists a significant disparity between the rates charged and the Telco's cost of providing the service. Accordingly, the Telco's TTS rates should be revised to conform to Department-established pricing requirements. Additionally, since the Telco is unable to bill differing rate elements for different types of traffic on a MOU basis, the Telco should also develop a process that more accurately reflects Pocket's billed MOU in place of a TTF.

B. ORDERS

For the following Orders, please submit an original and five copies of the requested material, identified by Docket Number, Title and Order Number to the Executive Secretary. Compliance with Orders shall commence and continue as indicated or until compliance is no longer required after a certain date.

1. No later than October 7, 2009, the Telco shall reduce its TTS rate to TSLRIC plus a reasonable contribution to its common costs of 35%, until the conclusion

of the Department's investigation in Docket No. 09-04-21. No later than October 14, 2009, the Telco shall file that rate with the Department.

2. No later than October 14, 2009, the Telco shall submit a revised TTF rate. This interim rate for TTS, as well as the ultimate TTS rate set by the Department shall apply to all telecommunications providers that are currently paying the Telco for TTS, whether pursuant to tariff, commercial agreement or interconnection agreement.

3. The Telco shall develop a billing method that more accurately reflects Pocket's traffic usage. In the event that the Telco cannot develop a more accurate manner in calculating a TTF, AT&T shall report to the Department as to whether the use separate trunk groups for carrying TTS that are separate and distinct from those that carry other traffic can be used; an indication if the Telco's switches could be upgraded to specifically identify TTS by wireless and wireline carriers, and the associated cost of the upgrade; and any other measure that the Telco could use to provide an accurate measure of Pocket's or other similarly situated carrier's TTS usage. The Telco shall provide this report to the Department no later than October 14, 2009.

DOCKET NO. 08-12-04 PETITION OF YOUGHIOGHENY COMMUNICATIONS-NORTHEAST, LLC D/B/A POCKET COMMUNICATIONS FOR A DECLARATORY RULING THAT THE SOUTHERN NEW ENGLAND TELEPHONE COMPANY D/B/A AT&T CONNECTICUT IS IN VIOLATION OF SECTION 16-247B OF THE CONNECTICUT GENERAL STATUTES AND THE DEPARTMENT'S ORDERS IN DOCKET NO. 02-01-23 RELATING TO TRANSIT TRAFFIC AND FEDERAL AND STATE LAWS AND REGULATIONS RELATING TO THE TRANSIT TRAFFIC FACTOR

This Decision is adopted by the following Commissioners:

Anthony J. Palermino

Kevin M. DelGobbo

John W. Betkoski, III

CERTIFICATE OF SERVICE

The foregoing is a true and correct copy of the Decision issued by the Department of Public Utility Control, State of Connecticut, and was forwarded by Certified Mail to all parties of record in this proceeding on the date indicated.

K. Santopietro

Kimberley J. Santopietro
Executive Secretary
Department of Public Utility Control

October 8, 2009
Date